LAND LAW

IN

MADRAS PRESIDENCY

BY

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PREFACE

I have endeavoured within the short compass of this book to state clearly and *succintly* not merely the law but also the history relating to the various types of landholding in the Presidency. The book, though mainly intended for students and *beginners, will, I hope, be not out of place on a* practitioner's table.

I have heard many a beginner say that the subject of Land Tenures is too dry and too complicated to form an interesting study. But the truth is really otherwise, for, the subject is one of absorbing interest to any one who begins to study it under proper guidance; and if a study of this book will make the beignners feel that the study of Land Tenures is not half so dry as it is thought to be, but is as interesting as, if not more than, a study of either Hindu Law or Contracts, I shall be content.

In bringing out this book, I am bound to express my gratitude to my senior Mr. T. M. Krishnaswami Iyer, High Court Vakil, Mylapore, for having given me the benefit of his wide experience in the field, by discussing with me many of the important topics in the subject. My thanks are also due to Mr. A. Ramachandrier, High Court Vakil, Mylapore, for having revised the manuscripts before going to press and given me useful suggestions.

Mylapore, Madras, 21-9-27 } B. R. CHAKRAVARTHI

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INTRODUCTION

At the root of the Indian law of land lies the conception of *private ownership* and accounts for many a fundemental difference between our system of landholding and the system of landholding in a country like England. "The theory of our law" says Goodeve "is that a subject cannot be the absolute owner of land, but only a *tenant* or holder of it for an estate, (*i.e.*) an interest giving him and his successors in title a right to the occupation and enjoyment of it, or its rents and profits for a period which may be indefinite or uncertain as to its duration but is not perpetual." In England. therefore, all land is considered to be vested in the crown, who is called the 'Lord Paramount' and to have been granted by him to his subjects by the process known as infeudation. Even the latest Parliamentary Enactment, which has to a very large extent altered the law of Real Property in England, has not, affected this fundamental principle. For, though the Statute,[1] has abolished many of the incidents of the feudal law such as escheat and fealty and made an "estate in fee simple" absolute ownership for all practical purposes, yet the theory remains that the King is the owner of the soil. According to Hindu Jurisprudence, on the other hand, the ownership of the soil vests in the subject and the King is entitled only to a tax for the protection that he affords to the subject.

1. Lord Birkenhead's Act 1922.

The question has often been discussed by learned writers as to what is the nature of the land revenue in our country; Whether it is a *rent* or merely a *tax*. This is merely a different aspect of the question relating to ownership. For, once it is conceded that the subject and not the sovereign is the owner of the soil, it follows naturally, that the revenue whether high or low, is only a tax.[1] On this subject the ancient Hindu authorities are abundantly clear. The following are passages from Manu.

"Of cattle of gems, of Gold and Silver, added each year to the capital stock, a fiftieth part may be taken by the King; Of grain an eighth part, a sixth or a twelfth according to the difference of the soil and the labour necessary to cultivate it".[2]

"A military King, who takes even a fourth part of the crops of his realm, at a time of urgent necessity, as of war or invasion and protects his people to the utmost of his power, commits no sin."[3]

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1 Of course, the State is entitled to own land as well as any private individual. But, what we are here concerned with is, is it proper to say that, the ownership of the soil of every bit of land in the realm is vested in the King and the subjects are only entitled to enjoy them in varying degrees though such enjoyment, will in many cases approximate to absolute ownership of the land itself.

2. Chap. VII Sec. 130.

पञ्चाशद्भाग आदेयो राज्ञा पशुहिरण्ययोः
धान्यानामष्टमो भागः षष्ठो द्वादश एव वा ॥

3. Chap. X Sec. 118.

चतुर्थमाददानोऽपि क्षत्रियो भागमापदि ।
प्रजा रक्षन्परं शक्त्या किल्बिषात्प्रतिमुच्यते ॥

"That King who gives no protection, yet takes a sixth part of the grain as his revenue, wise men have considered as a prince who draws to him the foulness of all his people."[1]

"Of old hoards and precious minerals in the earth, the King is entitled to half by reason of his general protection and because he is the ruler of the land."[2]

All these passages distinctly point out, that which the king is entitled to of lands cultivated by a subject is a *tax*, as the price for his protection, and no more. The last of the passages above quoted was considered by some scholars to support a contrary view. That was however due to misconception caused by the erroneous translation of the phrase भूमेरधिपतिः (Bumeradhipathi) into *Lord paramount of the soil* by Sir William Jones. But, later Sanscrit scholars have conclusively shown that the phrase simply means, the ruler of the earth or land and that the translation by Mr. Jones is absolutely unwarranted. For instance when we talk of ग्रामाधिपतिः (Gramadipathi) we only mean the head or the ruler of the village and not the owner thereof. Numerous passages are found also in the works of other ancient sages driving us to the

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1. Chap. VIII Sec. 308.

अरक्षितारं राजानं बलिषड्भागहारिणं
तमाहुस्सर्वलोकस्य समग्रमलहारकम् ।

2. Chap. VIII Sec. 39.

निधीनान्तु पुराणानां धातूनामेव चक्षितौ
अर्द्धभाग्रक्षणाद्राजा भूमेरधिपतिर्हि सः

same conclusion. Bodayana says "Let the king protect his subjects receiving a sixth." Parasara echoes the same when he says: "The king receives taxes and therefore must he protect his subjects from thieves and robbers."

षड्भागभृतो राजारक्षेत् प्रजा :

That the Hindu Kings never claimed ownership in the soil is also clear from the numerous instances, recorded in authoritative documents, of the kings having purchased lands from their subjects and then made a gift of them.[1] Abul Fazil has recorded in his Ayin-i-Akbari that the Hindu custom was merely to take one sixth of the produce by way of tax. Kalidasa talks of a like share to the King in Act II of Sakuntala.[2]

If we turn to the Muhamaden Jurisprudence for a while, there seems to be some difference of opinion between Abu Haneefa on the one hand and Abu Yusuf and Imam Muhamed on the other. According to the last two, whose view alone was accepted as law by the Muhamaden world, the Imam or the king is entitled only to a tax and he cannot claim any ownership in the soil.[3]

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1. See *Seshachalam* v. *Chinnasami*, 40 M. 410.

2. Williams' translation of Sakuntala, Act II P. 49.

3. Whosoever, cultivates waste laws with the permission of the [illegible] obtains a property in that; whereas if a person cultivates them without such permission he does not in that case become proprietor according to Hanifa. The two disciples maintain that in this case also the cultivator becomes proprietor because of the saying of the prophet, whosoever cultivates waste lands does thereby acquire a property in them"; and also because they are a sort of common goods and become the property of the cultivator in virtue of his being the first possessor; in the same manner as in the case of seizing games or gathering firewood. Hamilton's Hedaya, P. 610.

The following extracts from *Hedaya*, *Saadeea*, *Kheyrea* and other text books clearly point out the rule.[1]

" All our doctors concur in the opinion that the property in the soil is vested in the owner thereof, to whom it is lawful to sell it."[2]

" And in the letter written by Abu Yusuf to Haron Alraschid it is specified that the land is his who brought it into life and the imam may not dispossess him. But he (the owner) is liable for the land tax upon it."[3]

" And it has been proved that the prophet Umar decided that he who brought dead land into life was its owner."[4]

But whatever the idea was according to pure Muhamaden law, the Muhamaden rulers did not during their sway in our country displace the Hindu idea by their own, to any large extent. No doubt as S.C. Mitra points out in his Tagore Law Lectures on the Land Law in Bengal, when two fairly developed systems of jurisprudence came into contact, a conflict was inevitable. But, fortunately, whether due to the absence of any serious divergence between the two systems or to the incomplete nature of the Muhamaden conquest or to some other cause, the conflict seems to have ended in the assimilation of some of the Muhamaden ideas into the Hindu Jurisprudence, but without any serious alteration of or detriment to the principles of the latter.

1. Memoirs of an unknown Civilian.
2. Kheyrea.
3. From Kazeekhan quoting Hedaya and Saadeea.
4. From Saadeea.

The early British Administrators, being full of the ideas of feudalism which prevailed in their country, thought that the idea of individual ownership in land, was as much foreign to Indians as to the English at home. In fact, both the Bengal and the Madras Governments blundered in the first instance when they passed the regulations regarding the Permanent Settlement. In those regulations, those governments completely ignored the rights of the cultivating ryots and purported to confer absolute proprietary right on the Zamindars and other land-holders, forgetting that the latter were merely the assignees of the government and therefore had no proprietary interest in the soil.

Evidently, according to Mr. Campbell, they were misled by the fact that the zamindars and other intermediate land-holders, did as a matter of fact exercise absolute ownership at least with regard to certain lands under their supervision. The circumstances under which such ownership came to be exercised by them were two-fold. The first was, when a person already owning certain properties absolutely, was made the zamindar of his own village, he naturally exercised the rights, both of an individual owner and of the state in regard to the lands of which he was owner even prior to his being made a zamindar ; and the second was, when the central power grew weak, and was unable to extend its protection to every individual against the corrupt and oppressive practices of these middlemen, they began to successively assert absolute ownership in regard to lands that had been held by others and to which they had absolutely no

just claim. The want of clear distinction between the two separate rights united in the same person in the first case, and the ignorance of the corrupt means employed by the powerful land-holders in the second, coupled always with their natural leaning for the feudal relationship of landlord and tenant, seem to have obviously misled the early English administrators.

An unknown civilian summarised the evil effect of those regulations in the following words: "Unfortunately the just claims of the *raceuts* were altogether forgotten in settling the question of proprietary right; and strange to say, without evidence, without, proof, without investigation, the British legislature have delivered over as tenants at will, millions of free proprietors to the tender mercies of a race of tax-gatherers and speculators, who though not possessing a foot of land, have been by a stroke of the pen, converted into exclusive proprietors and seignorial lords of the provinces!" Fortunately the error was soon detected, and further regulations were passed to prevent the evil from gaining further ground. The regulation which was passed in Madras for this purpose was regulation 4 of 1822. Though the regulation merely purported to declare the true intent and meaning of Regulation 25 of 1802—the permanent settlement regulation—so far as the latter related to the rights of the actual cultivators of the soil, yet as a matter of fact, it recognised the error into which the legislature had fallen and wanted to rectify it. "It was thus, to borrow the language of Campbell" in the presidency of Madras, the zamindar's exclusive and

universal right in the soil, the illusive phantom of the early regulation—was gradually reduced to its true form—that of an hereditary agency, vested, with a proprietary right in the land revenue alone.[1]

Coming now to the judicial decisions on this matter, it is somewhat regrettable that there has been no direct adjudication upon the question, whether the ownership of the soil is vested in the sovereign or the subject or whether the land revenue is a *rent or tax*. But, there has been really a long series of decisions on the allied question, what is the presumption to be made regarding the occupancy right of a tenant in a zamindary or inam. The question is said to be allied because, the inamdar or zamindar being in most cases merely an assignee of the Government, if it is granted that the subject is the owner of the soil and not the state, the presumption to start with in an inam or zamindary should be that the zamindar or inamdar is merely the owner of the melwaram right or the King's share of the lands by way of revenue; if on the other hand, it is conceded that the state is the owner of the soil, the presumption to start with will be that the inamdar or zamindar is entitled to both the kudivaram and the melwaram. The earliest important case on the subject is *Chokkalinga Pillai* v. *Pandarasannathi*,[2] decided in 1870 where Scotland C.J. and Holloway J. held that there was nothing in the existing written law to render a tenancy once created not terminable at the will of the landlord. The impression created by that decision was, that neither in zamindaries nor

1. V Report Appendix P. 786. 2. 6 M. H. C. R. 164.

in inams the tenants had any occupancy rights. A contrary view, however, began to gain ground *as regards zamindaries* in 13 M 60 and 16 M. 271; and a presumption in the nature of a rule of law was first laid down in *Venkatanarasimha Naidu* v. *Dandamudi.*[1] There Justice Subramanya Iyer, while holding that a raiyat cultivating land in a permanently settled estate is prima facie not a tenant from year to year, but the owner of the *kudivaram* right in the land he cultivates, observed as follows: "In the first place sovereigns ancient or modern, did not set up here (in India) more than a right to a share of the produce raised by the raiyats in lands cultivated by them, however much, the share varied at different times. And in the language of the Board of Revenue which long after the permanent settlement was passed investigated and reported upon the nature of the ryots in the various parts of the presidency, 'whether rendered in service, in money or in kind and whether paid to Rajas, Jagirdars, Zamindars, Poligars, Mittadars, Shrotriamdars, Inamdars or to government officers, etc., the payments which have always been made are universally deemed the due of government'.........Therefore, to treat such a payment by cultivators to zamindars as *rent* in the strict sense of the term and to imply therefrom the relation of landlord and tenant so as to let in the presumption of law that the tenancy in general is one from year to year would be to introduce a mischievous fiction destructive of the rights of great numbers of the cultivating classes in this province who have held possession of their lands

1 20 M. 299.

from generations and generations.........It thus seems unquestionable that *prima facie* a zamindar and a raiyat are the holders of the Melvaram and the Kudivaram rights respectively." The rule so laid down served its purpose till the passing of the Estate Land Act in 1908. And as Justice Ramesam points out in *Muthu Goundan* v. *Perumal Iyer*,[1] if the Estates Land Act had not been passed, the ruling in the above case would have been considerably shaken by the recent Privy Council decisions.

So far as Inams were concerned, there was a good deal of hesitation in applying the presumption laid down in the 20 Madras case, to them. For instance, so late as 1902, it was said in *Subbaraya Sastri* v. *Kristnaiya*,[2] that there was no presumption either way. But the tide definitely turned in the direction of a presumption in favour of the raiyats in *Bhadrayya* v. *Bapayya*.[3] There, the High Court held that the presumption in the case of an inamdar is that what was given as inam was only the melwaram right. This case was followed by *Suryanarayana* v. *Pothanna*[4] where Justice Sadasiva Iyer and Justice Spencer once again asserted the rule that the presumption is that an inamdar like a zamindar is not the owner of the *Kudivaram* right. But when this case went on appeal to the Privy Council, their Lordships reversed the judgment of the High court, and laid down that there is no presumption in law that the grant of inam by a native ruler prior to British rule conveyed only the *melvaram*

1. 44 M. at P. 603.
2. 20 M. L. J. 526.
3. 21 M. L. J. 803.
4. 41 M. 1012.

or revenue due to the state. Unfortunately, while laying down this rule, their lordships made certain observations which were very hotly canvassed in subsequent cases.

The observations were these: "It has been contended on behalf of the respondents that in the times the Reddi Kings ruled in this district, the ownership of the soil of land in India was not in the sovereign or ruler, and that the right of the ruler was confined to a right to receive as revenue a share in the produce of the soil from the cultivator. Upon that assumption, it was contended that the inam grant of 1373 could have been only a grant of the King's share in the produce of the soil, that is, that the grant was a grant of land revenue alone and did not include the kudivaram. That is a presumption which no court is entitled to make, and in support of which there is, so far as their lordships are aware, no reliable evidence. The fact that rulers in India collected their land revenues by taking a share of the produce of the land is not by itself evidence that the soil of the lands in India was not owned by them or could not be granted by them; indeed the fact would support the contrary assumption, that the soil was vested in the rulers who drew their land revenue from the soil, generally in the shape of a share in the produce of the soil, which was not a fixed and invariable share, but depended upon the will of the rulers." The language of the preamble to Regulation 31 of 1802 which says "whereas the ruling power of the provinces......in conformity to the ancient usages of the country, has reserved to itself and *has*

exercised the actual proprietary right of the lands of every description" seems to have been the basis of their Lordship's conclusion. But unfortuuately, their Lordships' attention does not seem to have been drawn to regulation 4 of 1822 which was passed expressly for the purpose of avoiding any such misconception. However, the observations, being no more than an obiter dictum and being based on the very scanty material placed before their lordships, cannot be taken to be an authoritative pronouncement on the question of ownership or as to the nature of the land revenue.

This case was soon followed by *Venkata Sastrilu* v. *Seetharamadu*,[1] in which the Privy Council was again called upon to decide a similar question. The appellant was the inamdar of a village consisting of both cultivated and waste lands and he held it under a grant made to his ancestor in 1748, and since confirmed and recognised by the British Government. To suits in the Civil Court for ejectment against tenants of waste lands, the defence was set up, that the respondents had permanent right of occupancy and that since the inam village was an estate within the meaning of S. 3 of the Estates Land Act, 1908, the Civil Court had no jurisdiction to entertain the suits. Their Lordships negatived this contention and held, that since the decision in Suryanarayana's case,[2] which was decided subsequently to the judgment appealed from, there was no presumption of law that an inam grant of a village did not include the Kudivaram ; and that each case must be considered on its own facts, and in order

1. 43 M. 166. 2. 41 M. 1012.

to ascertain the effect of the grant, resort must be had to the terms of the grant and to the whole circumstances, so far as they could now be ascertained.

Subsequently, the question arose as to the true effect of these two Privy Council decisions. Some cases held that there was no presumption either way; but others held, that though their Lordships did not definitely lay it down, the presumption to start with should be, that in the case of an inam, both the warams passed to the inamdar. As a result of this conflict, the question was referred to a full bench of the High Court in *Muthu Goundan* v. *Perumal Iyer*[1]. Their Lordships Sir John Wallis, Justice Coutts Trotter and Justice Ramesan accepted the latter view and held that, although their Lordships of the Privy Council did not expressly lay down that there is a presumption in law, such an initial presumption is deducible from the grounds on which those judgments are based.

But this full bench decision has now been overruled by the P. C. in *Sivaprakasa Pandara Sannithi* v. *Veerama Reddi*,[2] where their Lordships have clearly laid down, that there is absolutely no presumption of law one way or the other and each case should be considered with regard to its own facts. The latest Privy Council decision on the subject, however, is *Naina Pillai* v. *Ramanathan Chettiar*, reported in 47 M. 337.[3] At first sight, in this last case, their Lordships seem to go back upon their ruling in 45 M. 586 and adhere to the view of the full bench; but a little scrutiny will

1. 44 M. 553.
2. 45 M 586.
3. 46 M. L. J. 546=49 M. L. J. 602.

reveal to us, that there is no conflict whatever between the two last Privy Council decisions. In the 47 Madras case, quite apart from any presumption, the courts found as a matter of fact, that there was a time at which the inamdar had both the warams in the lands; and having once found that, the court had necessarily to say, that the onus lay on the tenants to show how they acquired a permanent right of occupancy in those lands. It is, therefore, wrong to suppose that their Lordships meant to depart from their ruling in the earlier case and lay down a presumption in favour of the landholders.[1]

The position, therefore, now is this: that as regards Estates as defined by S. 3 of the Estates Land Act, there is a presumption that the landholder is entitled only to the melwaram right;[2] but as regards inam in general there is no presumption either way. Also on the question of ownership or the nature of the land revenue, there has been no authoritative pronouncement by the highest tribunal, but there are numerous observations by the judges of the High Court negativing the King's right to ownership and declaring that the land revenue is essentially a tax and not a rent.

So far, our discussion related to lands under cultivation. Now, coming to the ownership of waste lands, it is well settled, by judicial decisions, that except where they are specifically proved to belong to some one, they belong to the government and that the government is at liberty to dispose of it in any manner it pleases.[3]

1. 22 L. W. 625.
2. Ss. 23 and 185 of the Madras Estates Land Act.
3. *Seshachalam Chetty v. Chinnasami Asari*, 40 M. 410, F.B.

Some learned writers like Baden Powell are of opinion that a discussion as to the nature and character of the land revenue, is no more than of mere academical importance. But, it must be remembered, that a correct understanding of the true principle of land revenue administration, will not merely be useful to, but will be absolutely necessary for, the present and future legislators of our land, on whom will fall the task of reforming the existing system.[1]

LANDHOLDERS AND TENANTS

It will also be convenient at this stage, to advert to the relationship that exists between a landholder and tenants under him in our presidency. For understanding this relationship, it is necessary that we should divide the landholders into two classes (*viz.*) (1) Holders of what are called *Estates* and (2) Holders of lands *other than Estates*, variously termed the ***ryotwari and mirasi***

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1. A criticism of the above view; No doubt, in theory, the distinction between *rent* and tax is real and may be useful to be remembered; but *in practice*, the distinction is not half so real as it ought to be. In England for instance, where the ownership of the soil avowedly rests in the Sovereign, the land tax works out a much less percentage of the income from the lands than in our country where, at any rate, it is more than doubtful, if the Sovereign can lay claim to any such right in the soil. So then, the heaviness of land tax, which people have thought, should largely turn upon the decision as to the nature of the land revenue, in fact seems to turn upon the outlook and benevolence of the government rather than upon any abstract or theoretical conception of the land revenue. If, as is the case in India, more especially in Madras, the land revenue swallows up half and sometimes more than half the net profits from the land, there is hardly any virtue in calling the land revenue a tax and not a rent. But, if as a matter of fact, the day comes when the land revenue is fixed at not more than a sixth or even a fourth part of the income, there could be hardly any grievance in merely calling the revenue a rent and not a tax.

preprietors. The holders of estates generally go by the name of *zamindars, poligars, jagirdars, mittadars, and inamdars.* An estate has been defined by section 3 of the Estates Land Act thus:

An estate means

(*a*) a permanently settled estate or temporarily settled zamindari.

(*b*) any portion of such permanently settled estate or temporarily settled zamindari.

(*c*) any unsettled poliam or jagir.

(*d*) any village of which the revenue alone has been granted in inam to a person not owning the kudivaram right thereof, provided the grant has been made, confirmed or recognised by the British Government or any separated part cf any such village.

(*e*) any portion consisting of one or more villages of any of the estates specified above in clauses (*a*), (*b*) and (*c*) which is held on a permanent under tenure.

Shortly put it is a tract of land, consisting of one or more villages or sometimes only a part of a village, the holder whereof is entitled only to the melvaram right in the lands except in certain cases and in respect of certain lands known as waste and private lands. The melvaram right is a right to receive the king's share of the produce from the tenants in actual cultivation, either in kind or in money. The actual cultivator or the tenant is entitled to a permanent right of occupancy. He cannot be evicted

at will nor can he be made to pay a greater share as melvaram except on certain specified grounds. The rules regulating the relationship between the holder of an estate and his tenants in our province are now embodied in the Madras Estates Land Act which we shall study in detail in a subsequent chapter. It is enough for our purposes to note at this stage, that the relation which an occupancy tenant in an estate bears towards the holder thereof, is nothing like what an English tenant bears towards his landlord, but very much different. An English tenant is merely a tenant at will and is always at the mercy of the landlord; but an occupancy tenant of an estate in our presidency is a tenant with a substantial right in the land which he cultivates and cannot therefore be turned out by the landholder at his will. The reason of this distinction, we have already referred to in the previous part of this introduction. In the case of an English landlord and tenant, the latter holds the land of the former and he has no original title. That is to say, the tenant's right to hold is derived solely from the landlord and not from any circumstance arising independently of the latter. In our country, on the other hand, the title of an occupancy tenant in an estate, is an original title. It is not derived from the zamindar or poligar. The latter are merely assignees of the government on certain conditions. The government itself not being the owner of the soil, its assignees cannot lay any claim to the same but are merely entitled to the government's share of the produce otherwise known as the *'melvaram.'* The right of the tenant in the land is termed *the Kudiwaram.*

As regards the owners of lands other than those in an estate, they are absolutely entitled to the kudivaram, the right to melvaram being in the government; (*i.e.*) they are absolute owners of the property subject to the payment of revenue to the government. So, then, a tenant under a ryotwari or a mirasi proprietor is ordinarily not entitled to any right in the soil. If he claims any such right, he can do so only under a specific grant or by prescription.[1] The tenants who cultivate the lands of a ryotwari or a mirasi proprietor are variously termed *Payakkaris*, *Parakkudis*, *Ulkudis*, *Kaniatchis* or *Kudi Kaniatchis*. The last three designations are applied to those tenants who by prescription or otherwise, have acquired an interest in the soil which they cultivate. The quantum of this interest varies according to the terms of the grant or nature of the prescriptive enjoyment In most cases, it is both heritable and transferable; but in some, however, it is heritable merely but not transferable. In this connection the term *Swamibhogam* may be noted which means the share of the 'swami' or the proprietor.[2]

Of the *Payakkaris* or *Parakkudis*, there are two descriptions: the *Ool Parakudi*, is the fixed and permanent tenant of the mirasdar or landholder, and resides in the village in which the land is situate. The term *ool parakudy* is also sometimes used in the sense of *ulkudi* already discribed. The common *parakudy* is the temporary tenant who is invited by the mirasdar or landholder from a distant or a neighbouring village to

1. *Sethu Rathnam Iyer* v. *Venkatachalam*, 43 M. 567 P. C.
2. V Report Pages 41 and 87.

cultivate his lands, under an engagement for a given period; at the expiration of which his connection with the land determines, unless renewed by the formation of a new contract.[1]

Classification of lands from the point of view of Public Revenue.

The next important topic which we may study in this introduction is the classification of lands from the standpoint of public revenue. From the standpoint of public revenue, lands may be divided into

i. Those that yield revenue to Government; and

ii. Those that do not

Waste Lands, lands the revenue of which has been redeemed by payment of a lump sum and lands which are exempted from land revenue on other grounds come under the second head. Lands which are exempted from land revenue are the *manyams* or *inams* of various kinds compendioulsy described as *Lakiraj lands*, which we shall consider in detail in a subsequent chapter. In this connection, we may understand the significance of the expression *assessed waste*. It does not certainly mean waste lands for which revenue is payable. Waste lands may be divided into *assessed waste*, *unassessed waste* and *poromboke*. Assessed waste are those lands which, though lying waste, have been classified and on which the assessment payable by the person to whom it may be granted on darkhast or otherwise is fixed. *Unassessed waste* on the other hand are those lands which

1. V Report PP. 85 to 87.

have not been so classified and assessed, so that if they have to be granted to a person on darkhast, they must first be classified and assessed and then only granted. *Poromboke* are those lands, which are set apart for communal or public purposes. They are of varions kinds such as *River* or *Atthu poromboke*, (the bed, the banks and small strips of land on either side of a river) *Eri or Tank poromboke* (generally adjoining the foreshore or banks of the Erior tank), *Channel poromboke*, (small strips of land on either side of a channel) or *Nattam poromboke*, (lands set apart for building purposes.)

All lands not coming under the second head come under the first. Here again, we may distinguish between lands from which the revenue is collected by the Government direct and lands the revenue of which has been assigned to certain persons in consideration of their paying a fixed or a varying sum to the Government. The lands which are popularly known as zamin or mitta lands come under the latter category. In these cases, the zamindar or mittadar collects the revenue from the actual cultivators and appropriates them for himself, but pays what is called the *Peskush* to the Government. All other revenue paying lands come under the former category.

Ancient Revenue Administration.

It may also be useful to take a birds-eye-view of the ancient revenue administration in our province, both under the Hindu Kings and later under the Muhamaden rulers. Some authorities have taken the view, that collection by middlemen was entirely unknown to the

ancient Hindu rulers and that the revenues were collected mainly by the King's officers direct from the ryots. Some others, however, have taken the contrary view namely that the system of individual responsibility was surely of later growth and that the normal method of revenue collection under the Hindu Kings was by middlemen. Still others have taken a third view, namely, that the responsibility in ancient days being communal, the village communities as a whole responded to the government and that the government revenue officials were merely enjoined to collect the dues payable by the communities as bodies and were never required to go into the detail of collections from the ryots or actual cultivators. On a close scrutiny of these different views in the light of historical facts, it seems that each of them is partly correct and partly incorrect. The truth probably was, there was no single universal system of collecting revenue but many so as to suit the varied circumstances under which lands were held and cultivated.

For one thing, it is well established that renters and revenue farmers called *chowdries* were usually employed by our ancient Kings for the purpose of collecting the revenue from the cultivators and paying it into the government treasury. These revenue farmers were remunerated by a certain percentage of the collections made by them, usually ten per cent, besides their being allowed to cultivate and enjoy certain lands free from the payment of revenue. It is, however, not disputed that the *chowdries* were regarded more as revenue officers than as farmers of revenue and that there was no regular farming out of the revenues to persons for *fixed* sums, as

was the case in later times during the Muhamaden sovereignty. The fact that there was no obligation on the chowdries to pay any fixed sum to the Government reserving the rest for themselves, and that their remuneration was calculated only on the basis of actual collections made by them drives us, irresistably to the conclusion, that the system of revenue farming even where it existed, was nothing in the nature of the zamindary system which obtains at the present day, nor even the one which obtained during the Muhamaden period but was very much similar to the present system of collecting revenue in ryotwari tracts by means of village headman; but with this difference that while a village headman does not take a share of the collections, a chowdry did and consequently was interested in collecting as much as he could. In short, if we may use the queer expression, it was farming out revenue, on a *waram* system.

It is also equally well established, that where a joint village existed, the responsibility to pay the Government revenue, lay with the village community as a body or on its chosen spokesmen and not on the individuals separately for their own shares. So too, in the case of inam villages, (*i.e.*) villages the land revenue of which had been assigned to a person by way of inam, the duty of revenue collection fell on the inamdar who appropriated the collections for himself either wholly or partly in which latter case he had to pay out the balance into the Government treasury.

Side by side with all these, there seems to have also been an elaborate machinery consisting of a large number of Government officials of different grades and

importance for the purpose of land revenue administration. For instance, it has been pointed out by historians, that there was the village headman, above him the headman of ten villages, above him, the headman of a hundred and above all these the headman of a province, variously called the Governor, the Arasu or the Gopa.[1] It is really difficult to understand the necessity for such a machinery unless it be for the purpose of direct revenue administration. So then, we may take it, that in ancient India there were all these systems of collecting revenue namely, the direct collection from individuals wherever it was possible or convenient, the collection by revenue-farmers and assignees of Government respectively known as chowdries and inamdars, as also the system based on communal responsibility in the case of joint villages.

With the Muhamaden conquest one of these methods received a set back, while another of them received considerable encouragement and in course of time got itself firmly established. The foreign conquerors, found that any system of individual revenue settlement which necessarily demanded a detailed knowledge of the social and economic conditions of the subjects on their part, was entirely out of question and that the only system which could, with advantage, be adopted under the circumstances was the system of collection by middlemen. Wherever, therefore, the Muhamaden conquest was complete, the number of these revenue farmers rapidly increased and the system of individual settlement gradually fell into disuse. For instance, in Northern Circars which was the portion of our province over which Muhamaden dominium was

1. Elphinstone's History of India p. 67.

complete, the system of revenue farming, otherwise known as the zamindary system came to be firmly and almost fully established. At first, these farmers were called *Crories* in consequence of an arrangement by which the land was divided among them, that each had the charge of a portion of country yielding about a crorie of *dams* or two and a half lakhs of rupees.[1] In course of time, the term *crorie* was superseded by that of *zamindar*, which litterally signifying a possessor of land, gave a colour to the misconstruction of their tenure, and led the later administrators to suppose that the so-called zamindars had a proprietary right in the lands under their control.[2]

As regards an inam village, the inamdar had to do the business of collection, and except where he appropriated the whole of the collections for himself, he retained his fraction and remitted the rest either to the Government direct or to the zamindar within whose jurisdiction his village was situate.

During this period, the system of village leases, which is based upon the joint responsibility of the village bodies became a matter of secondary importance. The rulers never cared, as to what methods the zamindars adopted as regards internal collection, so long as they could call upon the zamindars to satisfy their demands; and the zamindars, most of them adopted a system of sub-leases, so as to leave the task of actual collection to the sub-lessees. These sub-lessees, in their turn, either called upon every proprietor to pay his due or agreed to hold the

1. V Report p. 7.
2. Ibid.

head of the villages or the village bodies as a whole, probably through their spokesmen, responsible for the revenue of the whole villages.[1]

This system of revenue farming which formed the basis of the permanent settlement in the early part of the nineteenth century under the strong patronage of Lord Cornwallis, received an effective check in our province, at the hands of Lord William Bentinck and Sir Thomas Munro and finally came to be abandoned, making room for the ryotwari settlement.

The types of landholding prevalent in the province

Lastly, we may briefly indicate the different types of landholding, or the tenures as they are called, now prevalent in our province. There are three main heads under which the different tenures may be classified. They are (1) *the Zamindary or the over-lord tenure* (2) *the Inam tenure* and (3) *the Ryotwari tenure.*

The Zamindary or the over-lord tenure is the system under which large tracts of the country, variously known as Zamindaries, Palayams and Mittas are placed into the hands of big landlords who, subject to the payment of a fixed assessment to the government, are free to collect and enjoy the entire revenues due from the lands under their control. These landlords, as already explained, are entitled, generally, only to the melwaram right in the lands comprising the estate with the exception of what are called waste and private lands. In the waste and private lands, however, they are entitled to both the warams. The relationship which such landlords bear

1. For temple see S. Arcot D. Manual p. 233.

towards the tenants under them, we have already referred to under a previous heading.

Under the head of Inam tenure come the various classes of lands held in *inam* by individuals or institutions, either absolutely rent free or at favourable quit-rents. *Inams are of various kinds, such as personal and service* inams, religious and charitable inams and so forth; and the limitations of any particular holding largely depend upon the nature of the inam and the purpose for which it was originally granted. But all lands coming under this group have this one common feature, namely, that the assessment due upon them have, either wholly or partly, been alienated in favour of the grantees in consideration of services past or present, private or public.

The Ryotwari tenure comprises of a system of individual settlement; that is to say, the government directly enters into an engagement with each ryot as to the amount of revenue payable by him and other conditions of his holding. The ryot pays the revenue straight to the government and subject to such payment is absolutely free to deal with the lands as he pleases. The revenue payable by the ryot is, however, not fixed and is liable to be revised at periodical intervals—generally once in thirty years.

The systems briefly explained above are dealt with in order more elaborately, in Parts I, II and III of the book.

We sometimes hear of a fourth class of tenure, namely, the *mirasi tenure*. Strictly speaking, this system of land holding is a thing of the past, but distinct traces of it are found at the present day in what are termed

mirasi rights, well recognised and respected in some parts of the presidency, such as Tanjore and Chingleput. Under this system, lands used to be held and enjoyed jointly by village communities with common rights and subject to common liabilities. In short, it was a system of joint holding—a feature discernible in the early stages of the history of, practically, all countries in the world—. At one stage, not only the holding was joint, but the lands were cultivated by common labour; but subsequently, there was a temporary division of the lands among the co-sharers, subject to periodical redistribution; and still later, there came into existence permanent division of the properties but subject to certain minor rights and liabilities in common, such as a common right to the waste lands or a common right of pasterage. These rights are what are termed the *mirasi rights* alluded to above.

LAND TENURE

PART I

CHAPTER I

Introduction of Permanent Settlement into the Presidency

When the East India Company assumed control over the administration of the province, the revenues of the land were being collected mainly in two ways. The first was that people going by the name of Zamindars and poligars, collected the revenue from the ryots and paid a certain percentage of the collection to the government, retaining the balance for themselves as remuneration for their services; the second was that the Sirkar collected the land revenue directly. But even in the latter case, instead of employing a gradation of officers, for the collecting the revenue from each individual ryot as we have it now in the case of ryotwari lands, the government farmed out the revenues of single villages or groups of villages to individuals or to village communities leaving the task of internal collection to those intermediate agents called *renters.* This system offered a splendid opportunity to many a speculator to enrich themselves at the cost of the poor cultivators. Thus, there existed in *general an intermediate agency in one form or other.*

In the system of collecting revenue by middlemen, there were two important defects.

Firstly, there was no limit to the demand made by the government. They went on increasing their demand from year to year, without any regard whatever to the conditions and prosperity of the cultivators.

Secondly, there was nothing to prevent the Zamindars or middlemen from rack-renting the tenants under their control; for whenever the government raised its demand, the middlemen in their turn began to squeeze the tenants to the utmost, and in their anxiety to see, that they incurred no loss from their own pockets, but had a decent fraction of the collections left for them after paying the government its due, they more often than not, made the position of the ryots simply intolerable. The demand on the cultivator was, as pointed out by the authors of the fifth report, by no means confined to the established rates of revenue; for besides the sayer duties and taxes personal and professional, the ryot was subjected to all sorts of additional assessments and private exactions of the renters and government officers, so that, what was left to the ryot was little more than what he was enabled to secure by evasion and concealment.'[1]

Thus there existed one defect from the standpoint of the middlemen and another from the standpoint of the actual cultivator. And to remedy these defects the company adopted two sets of measures; the first was administrative and the second legislative.

Administrative Measures.

Provincial Councils were established to supervise the collection of revenue from the ryots by the zamindars and other middlemen. But these councils did not prove a success. This failure was attributable to four causes:

1. The stationary and distant situation of the councils from the zamindaries and villages.

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1. V Report P. 59.

2. The want of knowledge and experience on the part of the council of the internal management and detail of the revenue collections.

3. The ignorance on the part of the members of the council of the Indian languages.

4 The slender pay of the council and their staff, which in a degree made them indent upon the good will and friendliness of the powerful zamindars and other wealthy middlemen—In short, corruption was rampant.[1]

Being very much disappointed with the work of the council, the court of Directors appointed a special commission called the *Circuit Committee.* This too was not able to achieve much; for, besides the opposition which the committee received from the provincial councils, few of the members of whom the committee was composed had acquaintance with the Indian languages; and as stated by themselves, they depended wholly, for what intelligence they obtained, on the zamindars and the native officers in the villages, the very persons most interested to conceal the truth, and to impose upon them false information.[2] The result was, that in spite of its deep anxiety and earnest efforts to get at the truth, the committee practically remained in blissful ignorance of the dealings between the zamindar and his ryots. Soon, the provincial councils and the committee were abolished, collectors were appointed in charge of smaller areas and to supervise the work of the collectors, the Board of Revenue was constituted.

1. V Rep. pp. 21 and 26.
2. V. Rep. p. 4.

Permanent Settlement.

The authorities then set out finding ways and means to set right the defects of the existing system. Different remedies were suggested by different people. Some proposed a ryotwari settlement (i.e.) a settlement to be made with each ryot or cultivator at a *fixed* rate for the land that he cultivates. Others proposed what is called the *village settlement* to be adopted throughout ; (i.e.) a rent to be settled with all the cultivators or ryots of a village jointly for a fixed sum of money for a period of years. Still others recommended the extension of the zamindary system, but to fix the Government demand on the zamindaries. A good deal of correspondence passed between the Government of Madras, the Government of India and the Court of Directors, on this subject for several years.

About the year 1790, in Bengal, a ten year settlement was tried by Lord Cornwallis under instructions from the Court of Directors and in 1792, even before the expiry of the decennial settlement, permanent settlement was introduced into that presidency.

Having found the system a success in Bengal, a suggestion was made by the court of directors on the advice of Lord Cornwallis to extend it to other parts of India especially to Madras. This suggestion was met with a good deal of opposition from our province and some of the collectors and the members of the Board of Revenue declared it to be utterly unsuitable to Madras. The following are some of the numerous objections levelled against the establishment of a permanent zamindary system.

1. The power of the Government would be curtailed by creating landed aristocracies; that many of the existing zamindars were improvident landholders and some rebellious subjects.

2. The ryots would in some cases be liable to oppression.

3. The Government would lose the benefit of waste lands.

4. Most of the zamindars were ignorant and it would be a folly to entrust the revenue administration of large tracts to their hands.

5. The Government would be sacrificing its revenue for all time by fixing its demand at that early stage.

But all these objections were overruled and in the year 1799 the court of Directors issued definite orders for the extension of the system into the presidency. But, before we pass on to discuss how the system was worked out, it will be instructive to note the answer given by Lord Cornwallis to some of these objections and the real object of its supporters in extending the system to Madras.

"It has sometimes been objected to these arguments" said Lord Cornwallis "that the revenue of the sovereign was sacrificed to the comfort and prosperity of the subject:—This is perhaps impossible. The interests of both are too closely and inseparably connected. The security of the subject will always enrich him, and his wealth will always overflow into the coffers of the sovereign. But if the objection were just in point of policy, it would be the highest tribute to the virtue of the Govern-

ment. *To sacrifice revenue to the well being of a people is a blame of which Marcus Aurelius would have been proud.*"[1]

The object of the Government in introducing the system is vividly explained in the instructions issued to the collectors by the Madras Government in October 1799, as follows: The object of the Government, distinct from the consideration of the public revenue, is to ascertain and protect private rights; and the limitation of the public demand upon the lands is obviously the most important and valuable right that can be conferred on the body of the people who are in any respect, concerned in the cultivation of the land. The measure is likewise connected with the emancipation of this class of people from the severities and oppressions of aumils, farmers and other officers necessarily employed to collect the public dues: when they are liable to frequent and arbitrary variations, it involves the happiness of the cultivators of the soil, *who cannot expect to experience moderation or encouragement from their landlords whilst they themselves are exposed to indefinite demands.* The prosperity of the commercial part of the people, equally depends upon the adoption of it; as trade and manufactures must flourish in proportion to the quantity of raw materials produced from the lands. It will render the situation of proprietor of land honourable instead of disreputable, and land will become the best, instead of the worst of property.[2] And besides these avowed objects so openly declared, there was

1. quoted V. Rep. appendix P. 636.
[Printed at p. 391 Appendix V. Rep.]
2. V Rep. Appendix p. 319.

quite another matter which in a measure compelled the Government to adopt a policy of permanent settlement. That was this: Owing to the frequent wars, the British Indian Government was practically on the verge of bankruptcy: and they had not even sufficient funds to pay their servants liberally to keep them out of corruption and private enterprises, and they found that the direct collection of revenue from the cultivators, most often in kind instead of in money, was not only laborious and tedious, but involved the employment of an army of Government officials to make the collections successfully. It was therefore thought, that the wisest thing to do under the circumstances would be to ensure a good and permanent income to the Government rather than to aim at more and more and get less and less.[1]

It was on a careful consideration of these factors, that the Court of Directors passed the order above referred to. In making the order, they made the following observations which deserve our notice. "We find it convincingly argued that a permanent assessment upon the scale of the present ability of the country, must contain in its nature, a productive principle; that the possession of property and the sure enjoyment of the benefits derivable from it, will awaken and stimulate industry, promote agriculture, extend improvement, establish credit and augment the general wealth and prosperity..................Having thus explained our opinions on the several points which have arisen, we conclude, by stating to you, that important and arduous as we consider the measure of perpetual settlement and irreversible as it

1. The Modern Review for Feb. 1918 pp. 122-129.

is in its nature, we think ourselves bound by considerations of duty to all the interests which it concerns to proceed to it.[1]

In pursuance of such an order the permanent settlement regulation 25 of 1802 was passed by the local Government embodying the rules and principles to be observed in introducing the system and between the years 1802 and 1805, the introduction of the system so far as it was possible was effected.

The Steps Taken

The Zamindars and poligars and other land-holders that were in charge of estates even prior to that time were offered the choice of settling their *peskush* (=revenue payable to the government) at an unalterable amount. Many availed themselves of the opportunity and got the benefit of the government demand once and for all fixed. But some looked upon this act of the government with suspicious eyes and avoided permanent settlement. A few poligars according to Baden Powell attempted to resist the local authorities in the hope of continuing the same course of lawless exaction and plunder that they had adopted for a long time. Hence it is we have to-day what are called the unsettled palayams.[2]

As regards Havelley lands, that is, lands not in charge of Zamindars and poligars, but under the direct management of the government, instructions were issued

1. V Rep. appendix p. 320.

2. At present, however, even in the case of the so-called unsettled palayams the peskush is fixed, but only there is no grant of a permanent sunnad.

to the collectors to parcel them out into mittas or muttas of varying sizes and sell them in public auction to the highest bidders. A few details of those instructions given by the Board of Revenue to the collectors for introducing this system may be mentioned here.

1. The collectors are to parcel out the lands into lots competent to bear a fixed jamma from one to ten thousand pagodas each and to put them to public sale, exclusive of the salt and sayer revenue, which included the abkary, which are to be retained in the hands of the government.[1]

2. They must try as far as possible to form out estates to yield an annual jamma of more than five thousand pagodas as being more likely to give better security for a permanent revenue, and as tending more to encourage extensive improvement, and enabling the proprietor to make up deficiencies, in some, from advantages derived from villages, more favourably situated.[2]

3. In forming the lots, attention must be paid to local circumstances such as including all villages watered from one tank in one estate ; each estate to be compact, not formed of dispersed villages.[3]

4. As far as possible the construction and care of the tanks and water courses should be left entirely to the proprietors, who would however, to encourage improvement, be assisted by loans from the treasury.[4]

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1. Para 58. V Rep. Appendix. p. 330.
2. Ibid.
3. Para 59 Ibid p. 331.
4. Ibid.

5. Where (1) works might be of great general importance to the country or (2) too extensive to be entrusted to the charge of individual proprietors or (3) where there may in the opinion of the collector other causes which would make it advisable for government to reserve the care and repair of them, the collectors should state their reasons at large and reserve them in the hands of the government.[1]

6. In a case, where the construction and care of the tank or water course is reserved to the government, the Jamma should be so apportioned, as to indemnify the government as far as may be practicable for the charge to be thereby incurred.

7. The conditions of the purchase would be the same as those prescribed to the Zamindars becoming proprietors of their estates, and the purchasers would be to all intents and purposes on the same footing as well in regard to their under-tenants and ryots as to all older regulations which would be contained in the general code.[2]

8. Actual measurement of land was not to be resorted to except in very particular cases; and these must be reported to the government for previous sanction.[3]

9. It was not the wish of the Government to demand more than a moderate equitable Jamma to be ascertained with due regard to the then present assets and those that might accrue in future, without the necessity of incurring the expense and delay of measurement.[4]

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1. Ibid.
2. Para 60 Ibid p. 331.
3. Para 61 Ibid.
4. Para 68 Ibid. p. 333.

10. Though variation might be necessary with regard to particular zamindaries or estates, arising chiefly from local considerations, the general standard to be adopted in fixing the peskush was two thirds of the gross produce, excluding the items of revenue derivable from the various heads of, salt and salt petre—of the Sayer and internal duties; and in estimating the gross produce the statement of the Circuit Committee should be taken to be correct except so far as later reports had proved it to be inaccurate.[1]

11. All private lands appropriated by zamindars and other land-holders should be considered as forming part of the circar land and therewith responsible for the public Jumma.[2]

12. All waste lands situated in an estate or zamindary were to be given up in perpetutity to the zamindar or other land-holder free of any additional assessment, with such encouragement to every proprietor to improve his estate to the utmost extent of his means as was held out by the limitation of the public demand for ever. The advantages which might be expected to result in the course of progressive improvement from those lands, ought to put the zamindar or other landholder upon that respectable footing as to enable him with the greatest readiness to discharge the public demand, to secure to himself and family every necessary comfort and to have besides a surplus to answer any possible emergency.[3]

13. Some of the lots might contain a larger extent

1. Paras 17 and 18. Ibid p. 322.
2. Para 25. Ibid p. 324.
3. Para 27 Ibid.

of uncultivated arable and waste lands than others; while some might possess peculiar advantages, from local causes favourable to cultivation and the disposal of the produce, such as having a plentiful supply of water and being near the sea-coast or large towns:—all these and other circumstances must be ascertained and duly estimated in fixing the peskush.[1]

14. In those instances where it was probable, that the improvable nature of the lands or other favourable circumstances of future avail, might make it admissible not to demand a permanent Jamma, which might be proportionate to its computed value in an improved state, until a future date; but nevertheless that it might derive all the benefits of permanency in the assessment, it would be advisable to fix a reduced Jamma at the commencement and gradually to raise it to the full assessment at the periods to be specified in the bill of sale.[2]

15. Also in other instances where villages might be fully cultivated and little room for improvement left, it might be necessary to grant some abatement, and assess them comparatively at a reduced rate by reason of their being in the vicinity of hills or jungles or by reason of their being open to frequent depradations. In such cases a suitable abatement should be made and the Jamma fixed accordingly.[3]

16. It must be understood by the zamindars and other landholders that the government would be at liberty to impose any assessment, exclusive of the perma-

1. Para 63. Ibid p. 332.
2. Para 65 Ibid 333.
3. Para 76 Ibid p. 333.

nent settlement, as they might deem equitable on all lands paying no public revenue at the time of alienation, which might be proved to be held under invalid or illegal titles, and the revenues of which were not included in calculating the peskush.[1]

While issuing these instructions, the government who rightly apprehended a certain amount of opposition and hindrance from some of its servants in working out the system, included in their list of instructions an actual threat that officers who were found slack or disobedient in the matter of introducing the system would be severely punished. The following is a copy of the order made by the Government to the Board of Revenue, which the latter added to their list of instructions. "The conduct of the collector on this occasion forcibly evinces the impossibility of introducing a permanent system either of revenue or judicature, unless the collectors shall be disposed to a zealous and cordial discharge of their duty; but as the public prosperity and welfare absolutely require the introduction of the system without delay we are determined to guard against the failure of it, by the removal of those collectors who shall be found either incapable or unwilling to execute our orders through your Board; instead, therefore, of allowing much valuable time to be sacrificed in the consideration of indolent or negligent excuses, we enjoin you to point out, without hesitation, the instances in which it may become necessary to apply this effectual remedy."

Acting upon these instructions, the collectors began

1. Para 22. Ibid p. 323.

to work out the system in the respective districts under their control. As has been pointed out, the lands already in the hands of zamindars or poligars were confirmed to them in perpetuity on the prescribed conditions. The Hanelley lands having been parcelled out into mittas of various convenient sizes, were sold out by public auction to the highest bidders.

The fixing of peskush

The assessment on each zamindary was fixed exclusively of the revenue derived from the sale and manufacture of salt, from the sayer and all other duties, from the Abkari or tax on the sale of spirituous or intoxicating drugs and from all taxes personal and professional or duties on market places and fairs. The holders of *mauniams* or *inams* of various kinds were allowed to retain and enjoy undisturbed their tenures and priveleges, the rent or revenue payable by them having been excluded in computing the peskush. On the other hand, all russoms[1] and lands theretofore appropriated for the maintenance and support of police establishments were disposed of under orders of the government This step was dictated by the fact, that the government had taken over to itself the responsibility of maintaining peace and order throughout its territories including the zamindaries. The general standard, as instructed by the Board, by which the jamma or the peskush was fixed seems to have been two-thirds of the gross collections based on the estimate of the circuit committee. But, where the

1. Russooms=customs, customary commissions, gratuities. fees or perquisites; shares of crops and ready money payments received public officers as perquisities attached to their situations. Glossary to V Report:

estimate of the committee was found to be under-rated, the average of actual collections since the estimate was made was taken as the standard. In the case of territories that came under the company's government subsequent to the inquiries of the committee, recourse was had to the average of the actual collections since their annexation. In the cases of zamindaries in which lands were of a particularly improvable kind the estates were assessed at increasing rates which were to become fixed after a certain number of years.[1]

In the case of a few zamindars of the north and the poligars of the south, the peskush was settled not on survey or estimate but on what they had been customarily paying more or less in the nature of a tribute. The reason of this policy would be clear when we inquire into the origin and history of such zamindars and poligars. In a few others, as pointed out by Sankaran Nair J. in 37 M. at 344, the Peskush was simply an equivalent for the military services formerly rendered by them plus the nominal peskush which the Zamindars were paying to former rulers, without any reference to their assets. The Great Zamindaries of Venkatagiri, Kalahastry and and Carvetinagar are among these. The following is an extract from the report of the Board of Revenue to the Governor in Council dated the 12th of August 1802.

"The peskush of the Zamindars (of Venkatagiri, Kalahastry, Carvetinagar, and Bommauze) has long been fixed at small sums of money, bearing the proportion of about 14% to the revenue of their lands, but it is notoriously known, that previously to the treaty of 1792, the deficiency of the accountable peskush was amply compensated to the Nawab of Arcot by the indefinite exaction of Nuzzers and fines.

1. pp. 54 & 55 V Report.

To define therefore the actual situation of these Zamindars at the time of their being transferred to the authority of the British Government, they appear to have been bound to the payment of a small tribute in money, as the usual mark of dependence, to have owed the state military service undefined in its extent or nature, and to have contributed considerable portion of their resources to the exigencies of the Nawabs of Arcot, according to the constitution of the government of the Carnatic.

The conditions of the treaty under which the Zamindars were transferred to the authority of the Company in the year 1792 precluded the British Government from deriving those advantages from the poligar countries which had been constitutionally derived to the Nawabs of Arcot, for it was provided that the fixed peskush should not be augmented except by virtue of lawful, existing instruments which have never been produced and the nature of our military descipline renders the service of the zamindary troops useless to the purposes for which they were originally established and maintained." [From a P. C. Blue Book.]

So then, when the Government once made up their mind not to call upon the Zamindars to provide the government with military assistance, they added to the former fixed peskush, the money equivalent of the military expenses of which the Zamindars would in future be relieved and fixed the total so arrived at as the peskush payable by the Zamindars under the Sunnad. Thus, the settlement in these cases partook somewhat of a political character and was not merely based on a consideration of revenue.

When the assessment was settled, the Government issued to the zamindar or land-holder a certificate known as *Sunnad-i-milkiyat-Istimrar*, containing the amount of peskush payable by the latter and the special terms, if any, such as the maintenance of police or other kaval establishment, on which the estate is to be held, and the zamindar or landholder in return executed a deed called

Kabuliat which was an exact counter part of the sunnad.[1] And it was one of the express conditions of the issue of a sunnad that the zamindars or other land-holders should no longer continue to keep up any military force.[2]

The territories in which the system was first established were the country known as Jaghire (the present Chingleput) and the Northern Circars. Then came Salem and other Southern and central Districts; and lastly Trivendapuram and some Jaghire villages.

But, what with the determined opposition of some of the zamindars and poligars, and what with the slackness and indolence of the company's servants, not to speak of the positive hindrances which they threw in the way, the working of the system was by no means smooth or easy.

Growth of Permanent Settlement checked

In 1803, Lord William Bentinck became the Governor of Madras and objected to the further extension of the zamindary settlement. And people like Munro, the then Chief Collector of the Ceded Districts constantly urged for putting a stop to the zamindary settlement and for introducing the individual or *ryotwar* settlement. They considered that any settlement, so long as it involved the entrusting of the destinies of numerous peasantry to one man, it was bound to jeopardise the rights of the former and subject them to much hardship and oppression. However, judging from the results and what obtains to day, we are apt to misunderstand the motives of people

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1. For forms of sunnad see appendix c.

2. The preservation of internal order and transquillity in the respective zamindaries being henceforth vested solely in the government.

like Bentinck and Munro and reckon them among people, to whom, the prosperity of the masses did not afford even thoughts for a leisure hour. But as the following abstract will show, Bentinck was not opposed so much to the permanency of assessment as to the introduction of middlemen. He wrote:

"The more I consider this important question, the stronger my conviction is, that the present system is not the best that might be adopted. I am satisfied that the creation of Zamindars is a measure incompatible with the true interests of the Government and of the community at large. When I differ in opinion with persons of the greatest experience and ability, I do so with feelings of great diffidence, but without reluctance to pursue the dictates of mine own judgment. *I am not at all in variance with the principles of permanent settlement, which I admire and which I believe to be applicable to this and to every part of the world.* The principle of that settlement was limitation of the demands of the Circar. I venture to differ only as to the detail operations of the system, which has been founded on these principles."[1]

Similarly, Munro aimed at a system of individual settlement, or settlement with each ryot, not with a view to give the government an opportunity to review the assessment once in thirty years or in shorter intervals if need be, but with a view to give the ryots all the advantages of permanency in settlement, without any of

1. Lord William Bentinck's Minute dated 20th April 1803. V Report Appendix p. 609.

Also quoted in V Report at p. 118.

the disadvantages inevitable in a Zamindary system. But, as our ill-luck would have it, the later administrators kind enough to accept one half of his advice, were not prepared to accept the other half.

By this time, the opinion in England also having changed, the Court of Directors endorsed the view of Lord William Bentinck and prohibited the further extension of the system.

The result.

The result was, that only about a third of the presidency had the advantage or the disadvantage of becoming permanently settled. It is said, "the *advantage* or the *disadvantage* of becoming permanently settled" because, the holders of estates whose peshkush became fixed did not always profit by the arrangement, but often found that the peshkush was so high that they could hardly recover even the cost of collection. Consequently, many of the mittas fell into arrears and were sold by the government in public auction and purchased by themselves, because they could not find proper bidders. Thus, heavy assessment resulted in the disintegration of certain settled estates, to which, subsequently, the ryotwari system was extended. And even speaking of the Zaminidars and Mittadars whose estates did not fall into arrears, it could not be said that all had nothing but unstinted praise for the system. Some of them, were financially very bad, and had to adopt all sorts of corrupt and oppressive measures to get as much as they could from the ryots. It was only the holders of Zamindaries such as Vizianagaram, Venkatagiri and Kalahastry which had

been lightly assessed that found themselves in comfort and ease. As regards, some of the heavily taxed estates however, the government was pleased to revise the peshkush and save the holders thereof from the necessity of abandoning them ; as regards the rest, they either reverted to the government or passed into the hands of strangers by sale in public auction. Such was the effect of the permanent settlement on the Zamindars and Mittadars.

As regards its effect on the ryots or actual cultivators, it could hardly be said that the system met with any better success. As we have seen, the one condition that is absolutely necessary to enable the Zamindars to show any degree of moderation to the ryots was entirely absent in many cases, if not in all. The heavy assessment on the Zamindaries necessarily involved the rack-renting by the land-holders ; and the authors of the system who were anxious to *fix* the peshkush did not pay sufficient attention to the equally important matter namely the avoiding of heavy assessment.

The period of transition

Once the extension of the permanent settlement had been stopped, the question naturally arose what was the system of assessment which could be adopted with advantage as regards lands which had not been permanently settled. And the Government as a matter of temporary measure tried various systems in the several districts. These systems may be broadly classified under two heads:

(1) Individual settlements.

(2) Mozawar or village settlements.

An individual settlement was one which dealt with each individual mirasdar or ryot separately without there being any community either of interest or of responsibility between the several mirasdars or ryots of a village. The *Amani or sharing system* was an example of this kind. The systems known as *Appanam*, *Patthukattu*, *Tarambarthi* and *Dittum* were also concerned only with individuals. But, strictly speaking, these latter were not so much independent systems, as variations of *Amani* itself. Let us consider these systems one by one.

The Amani system. This was popularly known as the sharing system and was prevalent at one time or another throughout the presidency without exception. According to this, the produce was divided between the cultivator and the State; or in other words, the Government received its share in kind. Though well adapted, in a way, to secure the rights of the government in the produce; it was of all kinds of settlement the most open to abuse, and according to the authors of the Fifth report, was frequently attended with great loss and inconvenience, both to the government and to the cultivator. It was necessary under this system to keep up a large establishment of officers, who sometimes combined with the cultivators, to defraud the government of its rights; and to check and bring to light these artifices was extremely difficult, while so many facilities to the practice of deception existed; and as the crops could not be taken in by the ryots, until their value was estimated by the servants of the Government, they were often suffered to remain so long on the ground as to be greatly damaged and during that time unavoidably liable to depredations. In fact, the difficul-

ties experienced by the government in working out this system even prior to 1800, was one of the causes for the introduction of the Permanent Zamindary settlement.[1]

The Appanum System. This system seems to have been prevalent in the Ceded Districts especially in Bellary. The origin of this system is traceable to the complaint of responsible Government officers that in Ceded Districts the potails or village headmen enjoyed very large irams very often for nothing. " It is not right " wrote Mr. Munro in his minute dated the 31st August 1820 " where the public revenue consists chiefly of a highland rent, one third or fourth of a great province should enjoy the priveleges of being cultivated, not only without contributing to the public revenue, but of diminishing it by drawing away the cultivators from Sirkar lands."[2] In the case of the headmen who held large inams the difficulty was met by this system. Under this, the headman was compelled to take up and pay assessment for a considerable area of Government land in addition to his inam and was not allowed to relinquish it. Mr. Pelly disliked the system and recommended its abolition in Bellary. But the Board objected saying " In the Ceded Districts, Potails enjoy very large inams because in addition to their ordinary duties they were held answerable for keeping up the cultivation of the village. *When, therefore, ryots went away and gave up their lands, the Reddies were required to engage for the cultivation* and on this principle the *Appanam system* is founded. It is undesirable but before it is abolished there must be full inquiry into the inams

1. V Report P. 25.
2. Bellary Dt. Gazetteer P. 174

and they must be put on the same footing as in other Districts."[1] The words in italics contained in the above quotation show another phase of the system namely, that not only was a headman saddled with a considerable portion of government land for cultivation, but, where a ryot in his village, having engaged to cultivate certain lands, ran away, the headman had to undertake to cultivate the lands himself or find some body else to do so. In the District of Bellary, the system remained in force till 1866.

The Patthukattu System.—The main principle of this system was, that whatever land was once brought by a ryot under the plough, became thenceforward his Pattukuttu and no part of it could at any time, be relinquished by him. This system seems to have prevailed in the District of Coimbatore and South Arcot and in some parts of Trichinopoly.[2]

The working of this system in Coimbatore is described by Mr. Drury in his letter to the Imperial Government in 1834 thus :[3]

" When a *substantial* ryot wishes to relinquish any portion of his Patkat, he communicates his intention to the Tahsildar and is required to take a portion of waste paying an equivalent rent. He is not permitted to take a portion of a field, but must take the whole, good and bad together, it being the principle of the Patkat system that the farm of every ryot should consist, of an equitable proportion of good and bad, high and low assessed soils.

1. Bellary Dt. Manual P. 182.
2. Trichinopoly District Manual P. 191.
3. Quoted in Coimbatore District Manual p. 111.

If a ryot (*not a substantial ryot*) wishes to contract his 'farm according to his means of cultivating it, he is required to give up a portion of good and bad lands together ; he is not at liberty to select all the good and abandon the bad." The working of the system in the District of South Arcot seems to have been slightly different. "The principle of this system" says the author of the South Arcot District Manual, "was that the holding of the previous fasli should be taken as the land for which the ryot was responsible in the current one and accordingly it was declared that every ryot was liable to pay assessment for all lands entered in his pattah whether he cultivated them or not and that he might resign any portion of his land provided he did so within a prescribed time.[1]

How the name *Patthukattu* came to be given to this system is not clear. For, correctly speaking, this is a tamil word meaning fixed or stipulated rent and is applied in Tanjore in all private transactions to money rents on *punjai* as distinct from grain rents on *Nanjai*. For example, a garden or Toppu is geneally being spoken of as being leased out on Patthukattu (*i.e.*) for fixed money rent.

The Tarambarthi System.—This system which seems to have prevailed in some Districts especially in South Arcot, was an equally bad system as the *Pattukuttu* if not worse. It is described in the South Arcot District manual thus : The system of Tarambarthi was one "by means of which it was endeavoured to prevent ryots from resigning

1. S. Arcot District Manual p. 294.

their highly assessed lands and cultivating only those that were lowly assessed; ryots who so assigned their highly assessed lands being charged for one year the assessment of the lands so resigned on their more lightly assessed ones which were cultivated." In the said district this pernicious system was abolished in 1827 by Brooke Cunliffe, the then collector.[1]

The Dittum.—This system seems to have prevailed in several districts, particularly in the Districts of South Arcot, Bellary, Cudappah and Kurnool and consisted of the practice of calling upon each ryot at the opening of the season for cultivation to signify the land he proposed to cultivate during the fasli, he being required to pay the assessment on the extent agreed on unless subsequently prevented from tilling it by accident of season or other causes beyond his own control.[2] The author of the Bellary District Manual in describing the system, points out, that however in practice, the taking of accounts(=Dittum) at the beginning of the season was invariably accompanied by inducements and injunctions to the ryots to take up more lands than they had means to cultivate in order to make a great show on paper. Obviously, this was due to the desire of the native officials to please the superior officers, who were ever anxious to bring more lands into cultivation and augment the revenue to the Government, by showing, at any rate, on record, a considerable extension of cultivation more than in previous faslies. "These defects in practice, therefore, involved, either an objectionable enforcement of cultivation or a mockery of

1. S. Arcot District Manual p. 271.
2. S. Arcot Dt. District Manual p. 280.

accounts."[1] This system was abolished in Bellary during the time of Mr. Pelly. The system was called *Dittum* because, it was based upon an estimate or forecast (=Dittum) made at the beginning of the cultivation season.

A Mozawar or village settlement on the other hand consisted in fixing up the assessment payable on each village or groups of villages, and entering into engagements with the body of cultivators as a whole, instead of with each cultivator. The one striking feature of this mode of settlement was joint liability on the part of the cultivators so that if one ryot failed to pay his quota, the others must make good the loss. The *olungu or oolungu*, the *motafisal or mottamfisal*, the *Bilmukta* or *mukta* and *Veesabudi* were the most common instances of this group.

The Olungu System.—The term *olungu* is a tamil word meaning *regulation* and was used to denote a standard of gross produce. The word seems to have been first used by Mr. Kindersely when reporting on the survey assessment which he introduced later on. Its use to describe this settlement is probably derived from the fact that a regulation or reconsideration of the grain standard of each village was an important element in the process of assessment. This system was invented to ensure the government "a money assessment which, though varying with considerable changes in price, should yet not constantly fluctuate." A system was accordingly decided upon whereby each village should be assessed to money rates, which were to be decreased when the price

1. Bellary District Manual p. 182.

of grain fell five per cent or more, below a certain standard and increased when it rose ten per cent or more above that standard. At the same time, a careful consideration took place of the real value of the village lands, of the proportion of the produce, which the government *ought to demand* and of the price at which the grain should be converted into money to arrive at the standard assessment. This system prevailed in Tanjore for nearly 45 years and in Tinnevelly for nearly 37 years.[1]

This system was a great advantage to the ryots; it gave them a standard price based upon the prices of years that were very low, and allowed them a range of 15% within which the standard remained the same, (i.e.) 10% above and 5% below; 10% of increase in prices was to be entirely to their advantage and only a rise beyond that figure was to benefit the government. The consequence was that the Amani villages which numbered 260

1. Professor Maclean has described in his manual that this system was merely a modification of the ryotwari settlement. That description is, however, somewhat incorrect; for, though there was some element of individual responsibility on the part of every ryot, yet the system was, in essence, merely a village settlement and proceeded upon an estimate of the income from the entire village. For instance, in Tanjore, what happened was this: an estimate was made of the annual income of the entire village and a particular fraction of it was fixed as the revenue payable to the Government; however not stopping with that, a liability was imposed upon every ryot to bear a part of the joint village revenue in proportion to his holding. The result was that though the Government had a right to proceed against a ryot individually in the first instance, there was the joint liability of the whole body of the villagers in the ultimate resort, and what was more, there was absolutely no attempt at surveying or estimating the produce of every ryot's holding, which is the essence of a ryotwar or individual settlement. The working of the system in Tinnevelly was almost similar.

Tanjore District Gazetteer page 175 and Tinnevelly District Gazetteer pages 263 and 264.

in 1829, were reduced to 30 in 1836 to 1850 and to Zero in 1861 in the District of Tinnevelly.[1]

The method by which the money assessment was arrived at any rate in Tanjore seems to have been very complicated. After describing the process, " such was the *olungu system* " exclaims the author of the Tanjore Gazetteer, " a complicated round about process indeed !"

The government while expressing their desire to avoid constant fluctuations in the assessment clearly laid down the principle, that under certain circumstances the rent would be raised. These were :

1. Cases in which the determination of the standard produce had been affected by fraud ;

2. When in consequence of improved means of irrigation, two crops were obtained on fields which formerly yielded one ; and

3. Cases where an additional extent of land had been subsequently brought under cultivation.[2]

The Motafysal or Mottamfisal system —This was a modification of the *Olungu*, the variations of the conversion rate according to the current prices being abandoned and the standard *olungu* price adopted once for all as an unchangable conversion rate. The fixed standard yield of each village and the low olungu rate remaining constant, when the prices of crop soon began to rise, the ryots found themselves in a very advantageous position ; and this resulted in rapid increase of cultivation.[3] In Tanjore

1. Tinnevelly Dt. Manual P. 75.
2. Tanjore Dt. Gazetteer P. 179.
3. Tinnevelly Dt. Manual P. 75.

however, it was at one time strongly condemned as being utterly useless. But, as the system was worked for sometime, the ryots realised the advantage and in the year 1859, it was declared to be the one best adapted to the district.[1] Both in Tinnevelly and Tanjore which were the two districts in which the system of *motafisal* was largely prevalent, it followed the introduction of the Olungu in the nature of a subsequent improvement.

The Bilmuta or mukta System.—There was no peculiarity about this system except that the amount fixed on a village was payable in a lump (mukta) by the village community or by chosen men of the village, and that the villagers distributed the total assessment among themselves according to the extent of lands cultivated by them.

In Northern Circars the term *Bilmukta* is used to designate a tenure on a fixed low rate of assessment.[2]

The Veesabudi System.—This system was prevalent in the Ceded Districts especially in Cuddappa and in Northern Circars. In this system, the assessment being fixed on the village as a whole, the lands of the village were held by the community in common and shares were allotted to the members by quarters, eighths, sixteenths, thirty-seconds and sixty-fourths; (i.e.) multiples or sub-divisions of *veesam* = one six-teenth.[3] From the nature of the division, the villages themselves were called *veesabudi or sixteenth* villages. Thomas Munro has described the system in his letter to the Board of Revenue dated the 30th November 1806, thus:

1. Tanjore Dt. Gazetteer. P. 182.
2. Glossory to V. Report.
3. Nellore Dt. Manual P. 270.

"When the season of the cultivation draws near all the ryots of the Veesabudy village assemble to regulate their rents for the year. The pagoda is the place usually chosen for the purpose, from the idea that its sanctity will render their engagements with each other, the more binding. They ascertain the amount of the agricultural stock of each individual, and of the whole body, the quantity of land, to the culture of which it is adequate; and they divide it accordingly giving to each man the portion which he has the means of cultivating and fixing his share of the rent; and whether his share be one or two-sixteenths, he pays this proportion, whether the whole rent of the village be higher or lower than last year.[1] Where this system prevailed, it also seems to have been often customary, for the residents of the village periodically, say every five or six years, to exchange all their lands, so as to secure an equal division of the soils good or bad.[2]

But none of these systems would work satisfactorily. The two chief causes of the failure, at any rate, of some of these systems were

1. An excessive assessment; and
2. in the case of village settlements, the joint liability.

A general survey of these systems, especially, the *Appanam*, the *Dittum*, the *Patthukattu*, and the *Tarambarthi*, will show, how poor the irrigation facilities should have been at that time, and how excessive the assessment,

1. V Report Appendix P. 352.
2. Nellore Dt. Manual P, 270.

that the ryots felt that ownership of land was more a burden than a valuable right. For instance, under *Appanam* system, the potail or headman was *compelled* to take up large portions of uncultivated land and pay assessment to Government. How many of us, to-day, would shirk taking up large tracts of land and pay the assessment, if only the Government would be pleased *to allow* us, not necessarily *compel* us, to do so? Obviously, therefore, at the time the Government tried some of these settlements, the people were made to groan under heavy taxation with the result that people, in many cases, actually fled away from their farms, to avoid the burden.

At last, all these systems were abolished and the system of ryotwari settlement invented by Colonel Read and Colonel Munro and tried by them in Brahmal country and Salem District was adopted throughout the presidency. Not only the lands that had not come under permanent settlement but aiso the Zamindary and Mitta lands that had lapsed to Government for arrears of revenue or otherwise, were settled on ryotwari tenure. Thus, the administrative measures culminated in establishing two modes of revenue administration,

1. On permanent settlement system,
2. On Ryotwari system.

Legislative Measures.

The legislative measures chiefly aimed at ameliorating the condition of the ryots in Zamindaries and permanently settled estates by regulating the relationship between the Zamindars or holders of permanently settled

estates and the ryots under them. In pursuance of such a policy, a number of regulations were passed in the year 1802. The first of these was the Permanent Settlement Regulation 25 of 1802. This provided, that where estates had been settled, permanent title deeds called *Sunnad-i-milkayat-istimrari* should to be granted by the Government to the Zamindars and other landholders and that in return these Zamindars and landholders should execute what are called *Kabuliats* in favour of the Government. It recognised the Zamindars' absolute power of alienation of the lands under their control subject to the condition of such alienations being registered in the collector's register. But the one important provision in favour of the ryots was that contained in S. 14, of the regulation which runs thus :—Zamindars or landholders shall enter into engagements with their ryots for rent, either in money or in kind, and shall within a reasonable period of time grant to each ryot a *patta* or *kaul* defining the amount to be paid by him and explaining every condition of the engagement. And the said Zamindars or landholders shall grant regular receipts to the ryots for discharges in money or in kind, made by the ryots on account of the Zamindars. Where a zamindar after the expiration of a reasonable period of time from the execution of his *Kabuliat* may neglect or refuse to comply with the demand of his under farmers or ryots for the pattas or receipts above mentioned, such Zamindar shall be liable to be sued in the adalat of the Zilla and shall pay such damages as may be decreed by the adalat to the complainant.—Thus, this section imposed a duty on the landholders to enter into written engagements with

the ryots. The deed of engagement was called a *patta* or *kaul* and this document should contain the amount payable by the ryot, the description of the land and other conditions of service. When the ryot paid the rent, the landlord was bound to give him a receipt.[1] This regulation was followed in quick succession by three other important regulations—28, 29 and 30 of 1802.

Regulation 28 conferred a power on the holders of estates to distrain for arrears of revenue. This regulation was later on repealed by the Rent Recovery Act of 1865 which however contained similar provisions.

Regulation 29 is what is called the Kernam's regulation, section one of which runs thus: "The office of the Kernam being still of great importance to the preservation of the rights and property of the people, it is expedient to provide for the continuance of that office, on an efficient establishment, for the purpose of facilitating the decision of suits in the courts of judicature, of preventing the diminution of the fixed revenue of the government, *and of securing individual persons from injustice* by enabling the public officers of government and the courts of judicature to *procure authentic information and accounts*. In conformity, therefore, to the ancient usages of the country, the following rules have been enacted for the establishment of the office of the Kernam." Thus the regulation points out the importance of the office of the Kernam in securing the private individuals from injustice, as for instance, a ryot in a Zamindary from being subjected to illegal exactions by

1. For the regulation see Appendix A.

the Zamindar, and proceeds to lay down detailed rules regarding the appointment, suspension, or dismissal of a Kernam and the manner of his duties. Section 11 is very important from the standpoint of a ryot and to a certain extent from the standpoint of the landholder also. It imposes a duty on the kernam to maintain permanent registers showing, besides other things.

(1) The extent and description of the land in each village '*exempted from the payment of government revenue* and the names of the holders thereof ';

(2) the extent, the rate of assessment and the amount payable thereon of lands *liable to pay money rents* ; and

(3) the amount of quit rents and ready money payments collected in each village.

According to section 12 the kernam can be required to produce, whenever necessary, these registers, before the proprietor or farmer of the estate, the collector, or the adalat of the Zilla ; and these registers afforded, in cases of dispute, a good documentary evidence as to the extent of the lands under cultivation, and the amount of rent payable upon them and other conditions of tenure. The Kernam could be compelled to swear to the truth of the accounts which he may produce before a court of judicature. If the kernam delivers false or fabricated or mutilated accounts, after having been duly sworn, the judge of such adalat could commit such kernam to be tried for the crime of perjury.[1] Proprietors of land or other persons who associate themselves with a kernam

1. S. 18.

for the purpose of procuring false or fabricated accounts are also liable for perjury under section 19. Thus proper safe-guards were made to see that the information obtained from the kernam's registers were, as far as possible, authentic and genuine.

Regulation 30 is the well-known *patta regulation* of 1802. The preamble to the regulation stated, that it was necessary that the terms of the holding between the landholder and the ryots should be reduced to writing. Section 2 provided, that the landholders and the ryots should exchange written engagements containing the terms of the holding, ; that given by the landholder being called the *patta* and the counter-part executed by the ryot being called the *muchilika*. Section 3 described the contents of these documents—the patta and the muchilika. The patta should contain a description of the property, the terms of the holding, such as the rent payable by the ryot and the time or duration of the tenure. These *pattas and muchilikas must be registered in the office of* the Kernam. A duty was also imposed on the holder of an estate to consolidate his demand into a single sum of money or one quantity of grain. The landholder could not make any demand except as provided for in the deed and for any illegal exaction he would be liable in damages to the extent of three times the amount so exacted. If the ryot demanded patta and there was refusal or delay, the ryot could sue the landholder for damages. Also, as was provided for in the Permanent Settlement regulation itself, an obligation was imposed on the landholder to give receipts for the money or grain received from the

ryots. The pattas and muchilikas were to be exchanged from year to year.

For our purposes, we can group the important provisions of these regulations under two heads: (1) Beneficial from the standpoint of the ryots (2) Beneficial from the stand point of the landholders.

(1) *Beneficial to ryots.*

i. The necessity for exchanging pattas and muchilikas and these to be registered in the office of the Karnam.

ii. The right for damages in the ryot, if the landholder fails to tender patta in time.

iii. The obligation imposed on the landholder to consolidate the rent payable by the ryot into a single sum of money or one quantity of grain—as also the penalty for exacting more than what is legally due.

iv. The power given to civil courts to decide disputes regarding the rates of assessment.

(2) *Beneficial to landholders.*

i. The summary power given to the landholder, to distrain for arrears of rent.

ii. The power conferred on the landholder to eject a tenant on refusal to accept patta.

iii. A similar power of ejectment given to the landholder, in case of default by the tenant in fulfilling the conditions of service.

iv. The right given to the landholder to summon and compel the attendance of the ryot whenever necessary, as for instance when the lands had to be measured and set apart.

But, these regulations had not their desired effect. The unhappy language of these regulations created a lot of confusion and gave rise to numerous litigations. The title to regulation 25 runs thus: A regulation for *declaring the proprietary right of the lands* to be vested in *individual persons* and for defining the rights of such persons under a permanent settlement of land revenue in the British territories subject to the Presidency of Fort St. George. The preamble further states that the idea was *to grant to the Zamindars and other landholders, their heirs and successors, a permanent property in the land in all time to come.* Section 2, declares that the assessment shall be fixed on all lands liable to pay revenue to Government; and in consequence of such assessment, *the proprietary right of the soil shall become vested in the Zamindars and other proprietors of land* and in their heirs and lawful successors for ever. The words in italics were construed by the English Judges to mean that the system of landholding in India was the same as that in England and that the relationship between the zamindar and the ryot was the same as that which existed between an English landlord and the tenant under him. Besides, the provisions which were intended for protecting the interests of the ryots were not taken advantage of by them, because, most of them were too poor to carry on litigation in a civil court. As it was justly observed by a learned lawyer, litigation in a civil court is a richman's luxury which very few poor people can hope to have. There was also a third defect, namely, that while certain summary powers were given to a landholder,

such as for recovering arrears of rent, no corresponding powers or safeguards were given to the ryots.

After two decades of trial, these defects were brought to the notice of the Local Government by the Board of Revenue which submitted a detailed report setting forth the existing defects and the possible improvements. Acting on the advice of the Board, the Government passed regulations 4 and 5 of 1822 which in a way remedied these defects. Regulation 4 declared, that in passing regulations of 1802 the Government had no intention of authorising any infringement or limitation of any established rights of any class of its subjects whatever and consequently the regulations should not be understood as having been meant to "*define, limit, infringe or destroy* the actual rights of any description of landholders or tenants, but merely to point out in what manner the tenants might be proceeded against in the event of their not paying the rents justly due from them. Section 2 of it also made it clear, that if any of their rights were infringed, it was open to the ryots and the landholders to recover the same with full costs and damages in the courts of law. Thus regulation 4 completely removed the misconception arising from the dubious language of the earlier regulations.

Regulation 5 remedied the second and the third defect above set forth. The main provisions of the regulation were as follows :

1. The revenue courts were authorised to take cognisance of disputes between the landholders and the ryots, so that suits could be filed in the revenue courts

free of stamp duty. This provision was surely in favour of the ryots who had otherwise to expend fairly large sums of money even for filing the suits. 2. Before evicting a ryot, the zamindar or landholder should take the permission of the collector. 3. In the case of distraint, the ryot could object to it by a petition to the Collector, and the Collector could order the Zamindar or the landholder to return the properties distrained and where the distraint had been wanton and illegal, also to pay damages. 4. If no patta had been validly tendered, a suit for eviction for arrears of rent would not lie. 5. From the decisions of the Collector an appeal lay to the Zilla Court.

It must be noted in this connection that these regulations 4 and 5 of 1822 did not repeal the regulations of 1802 but simply declared their true intent and meaning and modified them to some extent. Even as modified these regulations did not prove a success. The ryots were so completely under the control of the landholders that they could not easily take advantage of the provisions which were intended for their benefit. For instance, it was certainly easier to file a suit before a revenue court than in a Civil Court and yet very few ryots availed themselves of the provision entitling them to sue their landholders in a revenue Court. Consequently, in the year 1865 the Rent Recovery Act[1] was passed which was certaintly an improvement on the earlier enactments. This act contained very stringent provisions regarding the exchange of pattas and muchilikas; and definite rules were laid down for increasing the rents payable by the ryots. It was provided, that only *contracts* to pay enhanced rent were binding on

1. 8 of 1865.

the ryots and therefore, where there was no consideration or return benefit such as new improvements by the landholder or improvements made by third parties for which the landholder had to pay, a suit for enhanced rent would fail. Also, greater powers were given to the Collector to interfere in disputes between the landholder and the ryots as to the rate of assessment and similar matters. The Pattas issued by the landholder had to be approved by the Collector, and only such pattas as had got the Collector's approval would be valid and binding. When the landholder made an illegal claim and compelled payment, the ryot had a right to sue for damages before the collector. But even this act was inadequate to settle the exact relationship between the landholders and the ryots, and effectively prevent the disputes arising between them. The Act contained no declaration as to the substantive rights of parties and no amount of processual law could be of any material value, unless it was backed up by rules of substantive law, precisely defining the relationship of parties. The main question, whether the Zamindars and landholders were absolute owners of the land or whether the tenants had any permanent right in the soil, remained yet unanswered and gave rise to numerous decisions some favouring the ryots and others the Zamindars and landholders. For instance, in *Chockkalinga Pillai* v. *Vaithilinga Pandara Sannathi*,[1] the High Court of Madras held in spite of an earlier decision to the contrary[2] that the patta was in the nature of a lease deed from fasli to fasli and, therefore, at the expiration of the fasli for which the

1. 6 M.H.C.R. 164.
2. *Venkatrama Iyer* v. *Ananda Chetty*, 5 M.H.C.R. 120.

patta was issued, the tenant could be evicted by the landholder at his pleasure. So much for the absence of any specific declaration as to the substantive rights of parties.

Also, some of the provisions that were purely intended to save the ryots from unjust exactions by the landholder began to do serious harm to the interest of the landholders. For instance, the Rent Recovery Act provided that only *contracts* for enhancement of rent could be enforced. On the face of it, the provision is quite harmless but it works hardship in a case like this: Suppose the Government increases its demand and consequently the Zamindar also, in his turn, tries to increase the rent payable by the ryots—this is quite just and reasonable—but how is the Zamindar to prove consideration? In *fact there is no consideration and his suit must fail.* Such a result was certainly unjust to the landholder.

After the lapse of nearly half a century, the legislature wanted to set right matters, by placing the rights and liabilities of the Zamindars and their ryots on clear legislative basis. The Board of Revenue reported that the Rent Recovery Act was a failure. The Local Government instituted an independent inquiry and found the report true. So, the Estates Land Act was passed in the year 1908 which for the first time makes a specific declaration as to the occupancy right of the ryot in Section 6.

CHAPTER II

Estates in General

1. HISTORY

We briefly saw in the introduction what an estate consists of. It consists of a village or villages granted to a person in freehold and generally in perpetuity, on condition of his paying a fixed revenue or *Jamma* to the Government every year. The grantee is constituted, more or less, a permanent farmer of the Government-revenue and is invested with the right to collect and enjoy the revenues accruing from the lands under his control; and except in the case of waste and private lands, he has not got the *kudivaram* right in the lands comprising the estate and is entitled only to the *melwaram* or the revenue. Most of the estates in the presidency are now permanently settled, but some of them still remain unsettled. In the case of settled estates, permanent sunnads called *sunnad-i-milkyat-Istimrari* have been granted to the holders, while in the case of others no such deeds have been granted.

The estates scattered all over the province do not bear one uniform name, but are variously termed Zamindaries Palayams, Mittas and Muttas; and it may be worth our while to go somewhat into the history of these estates in general with a view to bring out the distinctions between them. *Zamindaries strictly so called*[1] and *Palayams*

1. The expression *strictly so called* is used because some of the *mittas* that came into existence at the time of the Permanent Settlement have in many cases assumed the name of *Zamindaries.*

date back prior to 1802, when in pursuance of the Permanent Settlement Regulation, estates called *mittas* and *muttas* came into existence. These Zamindaries and Palayams conform generally to one or the other of the following types : (1) remains of ancient principalities (2) tracts which were, during the Hindu and the Mohamaden rule under the control of military chieftains called poligars and (3) lands originally subject to the management and supervision of revenue-farmers called chowdries and crories, and in later times, Zamindars, under the former Governments.

When several of the native princes and Rajahs were nominally subdued by the Musalman conquerors, the latter found it not only inconvenient but in many cases impossible to take the territories of the former into their direct management and control ; and therefore, as a matter of policy, the immediate administration of the territories were left with the old princes and the rajahs, but they were compelled to pay a certain tribute to the conqueror, annually, in recognition of his sovereignty. But, in course of time, these princes and Rajahs lost all their power and independence and were reduced to the position of peaceful landholders collecting and enjoying the revenues from the territories under their control and bound to pay a fixed *jamma* or revenue to the central power.[1]

As regards the history of Palayams and Poligars we have very reliable information recorded in the Fifth Report of the Select Committee on the affairs of the East

1. Pages 753 and 771. Fifth Report Appendix. See also R. C. Dutt's Economic History of India during the early British rule. p. 110

India Company submitted to the House of Commons in 1812.[1] The name "poligar" appears to have been applied before the Mahratta invasion to persons holding in the Southern and Western portions of the Madras presidency, the position of those, who had acquired the name of Zamindars in the Northern Districts. Originally, the descendants of officers of Police and Revenue Agents of Hindu Sovereigns, they advanced themselves to the positions of chiefs, maintaining military forces and possessing fortresses and strongholds. As such, they were employed by the Musalman rulers in upholding subjection to their Government and managing the collection of revenue; and although it seems doubtful whether they were more than chiefs enjoying some degree of independence before the time of Aurangazeeb: yet, in later times, by embracing the frequent opportunities for refractoriness and the extension of their powers, afforded by the weakness and the inefficiency of the ruling power, they reached to the independence of tributary feudatories and proprietary holders of land: and that position, they or their descendants, were in general permitted to enjoy hereditarily down to the establishment of the British Government. Among the first acts of the Company's Government were the reinstatement of some poligars who had been driven out of their Palayams and the

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1. According to Wilson "Palayam is a tract of country subjected to a petty chieftain; and a poligar is a petty chieftain occupying usually tracts of hills or forests, subject to pay tribute and service to the ruling power, but seldom paying either and more or less independent. At present since the subjugation of the country by the East India Company, they have developed into peaceful landholders." This description has been approved by the P.C. in *Vargunty Lutchmeedavamma* v. *Vengamma Naidoo*, 9 M.I.A. 66.

confirmation of the others, (save a few who continued rebellions,) in the enjoyment of their estates, upon conditions of rendering to the Government their tribute and services.[1]

As regards the third type, we have already seen in the Introduction, how the revenue-farmers were, in the days of Hindu Kings, called *Chowdries*, how, during the Mohamaden rule they first came to be called *Crories* and then *Zamindars*, how they were regarded as mere tax-gatherers and were remunerated by a certain percentage, usually 10%, of their collections and the grant of certain lands called *savaram* lands, but how in course of time they began to exercise rights of ownership over lands under their control, how the Madras Government in 1802, without sufficient inquiry, "by a stroke of its pen" converted these tax-gatherers "not possessing a foot of land, into proprietors and seignorial lords of provinces," but how very soon the error was discovered and amending regulations were passed and "the Zamindars' exclusive and universal right in the soil—the illusive phantom of the early regulation—was gradually reduced to its true form—that of an hereditary agency vested with a proprietary right in the land revenue alone."[2]

We may here probably quote with advantage the description of a zamindar during the Moghul reign given by Mr. Harrington in *Rulers of India, Lord Cornwallis*,[3]

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1. The Marungapuri case in the High Court, per Scotland C.J. 6, M.H.C.R. at page 220 and 221.

2. See page 7, Fifth Report; also pages 753 and 755 Ibid.

3. Pages 34 and 35.

which is merely an elaboration of what is contained in the Fifth Report.[1]

"A Zamindar appears to be a landholder of a peculiar description, not definable by any single term in our language. A receiver of the territorial revenue of the state, from the ryots and the other under-tenants of the land: allowed to succeed to his zamindari by inheritance, yet in general required to take out a renewal of his title from the sovereign, or his representative, on payment of a peskush or a fine of investiture to the emperor or a nazarana or present to his provincial delegate the Nazim: permitted to transfer his zamindary by sale or gift, yet commonly expected to obtain previous special permission: priveleged to be generally the annual contractor for the public revenue receivable from his zamindary, yet set aside with a limited provision in land or money, whenever it was the pleasure of the government to collect the rent by separate agency or to assign them temporarily or permanently by the grant of a Jagir or Altangha :.........entitled to any contingent emoluments proceeding from his contract during the period of his agreement, yet bound by the laws of his tenure to deliver in a faithful account of his receipts: responsible by the same terms for keeping the peace within his jurisdiction, but apparently allowed to apprehend only and deliver over to the Musalman Magistrate for trial and punishment—that is in abstract my present idea of a zamindar under the Mughal constitution and practice."

The one distinguishing feature of the Zamindaries

1. At pages 7 and 8.

and Palayams strictly so called, is that most of them are governed by the law of primogeniture in regard to succession, while the mittas and muttahs of later origin are governed by the ordinary law of inheritance.[1]

But, whatever the distinction between the Zamindaries and Palayams on the one hand and the mittas or muttahs on the other, all of them were sought to be permanently settled by the British Government about the year 1802 and Permanent sunnads were, in fact issued, with regard to most of them. And the one matter in regard to which the government was influenced by the history of the various Zamindaries was in fixing of their peskush; for even prior to that time, the amount payable by these Zamindars and poligars varied considerably according as they belonged to the one class or the other; where the zamindar or poligar was a descendant of a native raja, the amount payable was in the nature of a tribute, and was fairly small though arbitrary, with no reference to the collections of revenue; where he happened to be the descendant of a military chieftain, the amount was merely an equivalent of the military and police services which he had, till then been rendering, together with the nominal tribute, if any, he had been paying to the state; where on the other hand, he happened to be the descendant of a heriditary revenue officer, the amount had been calculated more or less, on the basis of actual collections, and was therefore much higher than in the other two cases. When the geverament fixed the peskush payable by these Zamindars, they were naturally,

1. Maclean's Manual Vol. I. p. 33. See also p. 773 Fifth Report.

2. Observations in *Secretary of State v. Srinivasachariar*, 44 M. 421.

guided by what they had been paying up to that time. With regard to the Mittas and Muttas, however, which came into existence just then in pursuance of the permanent settlement regulation,[1] a calculation was made of the average income of the lands based on the estimate of Circuit Committee or otherwise and two thirds of the calculated amount was generally fixed as the peskush[2]; and such amount, in more cases than one proved rather too heavy, with the result, several of the estates came to be sold in public auction for arrears of revenue and purchased by the government itself for want of bidders.[3]

The effect of the Permanent Settlement

The one obvious result of the settlement was, that in regard to the estates to which the settlement extended, the peskush payable by the Zamindars and other land-holders was once and for all fixed. And the effect of such a fixation of revenue was, to borrow the words of Harrington, " in regard to the three interested parties—the zamindar, the ryot, and the ruling power—to assure generally, the welfare of the first, to somewhat postpone the claims of the second and to sacrifice the increment of the third.[4] That the interest of the ryot was somewhat postponed, is almost evident from the various legislative measures which the Government had to adopt, from time to time, for the purpose of protecting the interests of the

1. XXV of 1802.

2. Fifth Report p. 772.

3. For example the Urlam and other adjoining Zamindaries. See *The Urlam case*, 40 m. 886 P.C. See also Fifth Report pages 760 and 769 bottom; 782 and 783.

4. Rulers of India, Lord Cornwallis, page 73.

ryots against the landlords.[1] That the income of the Government was sacrificed is, also, to some extent true, because as a matter of fact in regard to periodical revisions of land revenue assessment, the hands of the Government are absolutely tied in the case of settled estates, while in the case of ryotwari tracts, they go on increasing the assessment every thirty years or so; and it is more or less a corollary to the last proposition that the welfare of the Zamindars and other landholders was generally assured.[3] However, it has been maintained by some authorities, that considering the circumstances under which it was introduced and considering also the increase in the collection of revenue in the province immediately after the introduction of the settlement, the settlement benefited, for the time being, at any rate, the Government more than any body else; and this view also seems to be correct, for to a government then at the verge of bankruptcy, nothing could be more beneficial than an assured income from the big landholders.[2] So much as regards the far reaching effects of the settlement in general.

1. pages 756, 757 and 758, 778 and 779 Fifth Report.

2. A similar view has been strongly maintained with regard to the introduction of Permanent Settlement in Bengal.—See the article in Modern Review February 1918, pages 122—129.

3. The Statement receives additional strength from the fact that the settled estates contain a large extent of waste lands that may be brought under cultivation in course of time, but on which no additional tax may be levied.

The following is an abstract from the Report of Mr. Thackeray printed in the Appendix to the Fifth Report p 710: It is impolitic to limit the land revenue of a great province, especially of one in which there is much waste land; though it may be absolutely necessary to limit the demand on individual estates. It may be expected that a good deal of land may be brought under cultivation in 50 years of our mild Government and be liable to pay a land tax, like those estates now assessed. In the event of war, of

At one time there was some dispute as to the effect of the words in the sunnad "the assessment your estate has been fixed." Some land-holders contended that the effect of the words was to make the estates immune not merely from any additional land revenue for all time to come but also from any manner of tax or cess. But now it is well settled that there is no such general immunity from any kind of tax and that the permanency of assessment contemplated by the sunnads was the permanency of land revenue and no more. This conclusion is borne out by the fact, that the words used in clause 2 of the Sunnads issued both before and after 1870 are "This permanent assessment of the *land tax* on your zamindari is exclusive of......".

Prior to permanent settlement, there used to be what are called remissions of revenue on the ground of drought, inundation and other calamities of season, with regard to all lands—whether zamindary or non-zamindary. But once an estate was permanently settled, it was specifically declared, that all those remissions which had been occasionally granted to it prior to that time will cease and determine and that the zamindar or other

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the public necessities increasing, the Government under the Mootah system, will be prevented from levying an additional and equal land tax. If, in such a case, they lay on two annas in the rupee, as they laid on two shillings in the pound in England, it will fall very heavily on the lands now under cultivation; but nothing comparatively on those which may hereafter be brought under culture. Government will be forced to double the burthen of those who now pay, to make up for the deficiency on those lands which do not pay the old land tax. See also pages 743 and 744. Also pages 766-767, and 789.

land-holder was bound to pay the fixed assessment, irrespective of the seasons.[1]

Unsettled Palayam.

We saw in the last chapter, that when the Government sought to give the benefit of permanent assessment to all the Zamindars and poligars in the province, some of the Zamindars and poligars looked upon the action of the Government with suspicion and therefore avoided permanent settlement. Hence it is we have at the present day, what are called the *unsettled palayams*. For some time, there was a conflict of opinion, both judicial and executive, on the question whether an unsettled palayam was heritable at all. Two cases of our High Court *Subba Chetty* v. *Masti Immadi Rani*[2] and *Arbuthnott* v. *Oolagappa Chetty*[3] as also three decisions of the late Suddar Court[4] seemed to countenance the view, that Palayams not permanently settled were estates for life only. On the other hand *Chouki Goundan* v. *Venkataramanier*[5], *Lutchmeedavamah* v. *Vengama Naidoo*[6] and *The Collector of Madura* v. *Veera Pamoo Ummal*[7] lent support to a contrary view. But the question was finally set at rest by the Judicial Committee of the Privy Council in the *Collector of Trichinopoly* v. *Lakkamoni*[8],

1. See clause 5 of the old sunnads and clause 3 of the new ones See also forms printed in the appendix and S. 6 of Regulation XXV of 1802.
2. 3 M. H. C. R. 303.
3. 5 M. H. C. 303.
4. Reported in the 1st volume *Select Decrees* pages 80, 141 & 172.
5. 5 M. H. C. R. 211.
6. 9 M. I. A. 66.
7. 9 M. I. A. 446.
8. 1 I. A. 282.

better known as *the Murungapuri case*. There, the question pointedly arose, whether an unsettled Palayam was essentially a tenure for life only and therefore was not heritable. When the matter came up before the High Court, it was contended on behalf of the Government that, in view of the language of section 2 of Regulation XXV of 1802, there could be no hereditary proprietors of land between the Government and the cultivators of the soil, except the rightful holders of estates permanently settled under the Regulation. Their Lordships Scotland C. J. and Innes J. in negativing the above contention observed as follows: "For these reasons we are of opinion that Zamindars and poligars and others in a like position, and occupying tenants, possessed different proprietory interests in land, by recognition of the Government, before the passing of Regulation XXV of 1802; that by it, the Government declared, with the force of law their acknowledgment and confirmation of such rights as they were then enjoyed......and provided for the permanent assessment of all lands liable to pay revenue to Government, and for issuing thereupon of express heriditary grants to every zamindar and other intermediate proprietor ;.........And therefore that the regulation does not operate to exclude or disfavour the maintenance of a claim against the Government to a hereditary or other estate in lands, which has not been secured the benefits of a settled title under the regulation, because, for political reasons, the Government has thought it inexpedient to give full effect to its enactments. *But the claims of title to such estates are merely left without the conclusive proof of hereditary title afforded*

by an istimrari sunnad. It follows that the existence of a proprietary estate in poliems or other lands not permanently assessed and the tenure by which it has been held are, in our opinion, matters judicially determinable on legal evidence, just as the right to any other property."[1] The judgment having been entered against the Government, the case went up on appeal to the Privy Council; and their Lordships of the Privy Council, affirming the decision of the High Court emphatically laid down, that the affirmative words of the second section of the Madras Ragulation XXV of 1802 did not either give new rights to the owners of lands not permanently settled or take away from them any rights which they then had and that therefore the proposition of law above set forth in italics is the correct one to be followed. This case was followed by the same Board in another case *Olagappa Chetty* v. *Arbuthnot.*[2]

So then, an unsettled Palayam now stands on the same footing as a settled Palayam, but with this difference, that while in the case of a settled palayam the title of the Paligar is clearly recognised by the Government by means of an *istimrari sunnad*, it is not so recognised in the case of an unsettled palayam. Even in ths case of unsettled Palayams the Government have now permanently fixed their demand, but only they have not granted the sunnad.[3]

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1. 6 M. H. C. R. at 226.
2. 1 I. A. 268. See also *Malayandi* v. *Midnapore Zamindary*, 40 M. L. J. 537 (P.C.) and *Venkata Jagannatha* v. *Veera Badra*, 41 M. L. J. 1 at 12 (P.C.)
3. Maclean's Administration p. 34. Land Rev. Tenures Vol. I.

ii THE LAW.

The law relating to estates, both settled and unsettled, is mainly contained in a few statutes and decisions of Courts. The statutes referred to are Regulations XXV, XXVI and XXIX of 1802, better known as the permanent Settlement, the Separate Registration and the Kernam's regulations, Regulation IV of 1822, the Separate Assessment Act I of 1876, the Impartible Estates Act II of 1904, the Revenue Recovery Act II of 1864, the Madras Irrigation Cess Act VII of 1865 the Proprietary Estates' Village service Act VI of 1894, The Hereditary Village Officers Act III of 1895 and the Estates Land Act of 1908. Of these, all the enactments except the last one, so far as they relate to estates, mostly deal with the rights and liabilities or disabilities of a zamindar or other landholder as such quite apart from his relationship with the ryots or tenants under him; and the last, almost exclusively, deals with the rights and liabilities *interse* of a zamindar or other landholder and the ryots or tenants under him.

We may conveniently study these statutes except the last one and the judicial decisions relating to estates under the following few heads.

A. What is comprised in an estate.

Settled Estates.

a. Waste, private and Lakhiraj lands: We saw in the last chapter, that one of the instructions issued to the collectors by the Board of Revenue regarding the permanent settlement of estates, in pursuance of the orders of the Government was, that all waste lands in an estate were to

be given up in perpetuity to the Zamindars free of any additional assessment with such encouragement to every proprietor to improve his estate to the utmost of his means, as was held out by the limitation of the public demand for ever. The reason underlying the instruction was stated to be, that the advantages which may be expected to result, in the course of progressive improvement, from these lands, would or ought to put the zamindar upon that respectable footing as to enable him with the greatest readiness to discharge the public demand, to secure to himself and family every necessary comfort and to have, besides, a surplus to answer any possible emergency.[1] It was also one of the instructions to the collectors that all private lands then apportioned by the Zamindars to the subsistence of themselves and their families as well as all lands held by private servants or dependents, should be considered forming part of the circar lands and therewith responsible for public jamma.[2] We have, besides, sections 4 and 12 of Regulation XXV of 1802, which provide as follows:—S. 4: the government having reserved to itself the entire exercise of its discretion in continuing or abolishing the articles of revenue included under the several heads of salt and saltpetre—of the sayer or duties by sea or land—of the Abkari—of the excise—of all taxes personal and professional—as well as those derived from markets, fairs and bazars—of Lakhiraj lands and all other lands paying only favourable quit rents, the permanent assessment of the land tax shall be made exclusively of the articles above recited. S. 12: It shall not be

1. P. 324 fifth Report.
2. Ibid.

competent to proprieters of land to appropriate any part of a landed estate permanently assessed to religious or charitable purpose or to any other purpose by which it may be intended to exempt such lands from bearing their portion of the public tax; nor shall it be competent to a proprietor of land to resume lands, or to fix a new assessment on lands which might have been allotted (at the time when such proprietor became possessed of the estate in which the lands are situate) to religious or charitable purposes under the denominations of Devadayam, Brahmadayam etc. The combined effect of the foregoing provisions is this:

1. In the case of a settled estate, the holder thereof is *prima facie* entitled to all waste lands lying within the estate; and he is entitled to bring those waste lands into cultivation without being subject to any fresh assessment.

2. All lands within the estate which, at the time of settlement, were held by the private servants and dependents of the landholder, are, subject to the rights, if any, of such servants and dependents, entirely at the disposal of the landholder; that is to say, such lands may in a proper case be resumed by the landholder from the servants or dependents.[1]

3. The landholder is not, except where they have been actually taken into account in settling the peskush, entitled to the revenues accruing from the several heads of salt and saltpetre etc; nor is he entitled to deal with, either by way of resumption or otherwise, the Lakhiraj

1. *Secretary of State* v. *Rajah of Venkatagiri*, p. 44 M. 864 at 872 P.C.

lands whose revenues have been excluded in fixing the peskush. Where, therefore, a landholder lays claim to the revenues or lands mentioned above, he should show that in fixing the peskush of his estate the provisions of S. 4 of Regulation XXV of 1802 were not complied with. In *the case of Secretary of State* v. *The Rajah of Venkatagiri*,[1] a question arose as to whether an arrangement with a zamindar contrary to the provisions of S. 4 of the Regulation was not illegal and therefore was not binding upon the government. It was strenuously contended on behalf of the Government both before the High Court and before the Privy Council, that in view of the provisions of S. 4 of the Regulation, it was not competent for the Governor in Council to grant a sunnad without reserving to the government the rights to Lakhiraj lands and that therefore the government was at liberty to disregard the terms of the sunnad. The learned Chief Justice in delivering the judgment of the High Court negatived this contention and observed as follows: "The section merely recites that government had reserved these articles of revenue and provides that the permanent assessment of the land tax should be made exclusively of them. I do not think that it was intended by this section in any way to restrict the full power of alienating all classes of land revenue which the Government had......... The section appears to me to have been enacted *alio intuitu* and like some other parts of the Regulation to be largely declaratory and explanatory of the position which the Zamindars were to occupy under the sunnads that were to be granted to

1. 31 M. L. J. 97 H.C. and 44 M. 864 P.C.

them. Full effect may, I think, be given to section 4 by holding, that it was not intended to affect the power of government to alienate the reserved articles, if so minded, but only to secure, that the zamindar should not be assessed on what was not granted to him." Their Lordships of the Privy Council expressed their approval of these ebservations and held that the government could not give a go bye to the terms of the-sunnad and adopt a plea of illegality.[1]

4. The private and home farm lands of the land-holder exclusively belong to him and he is entitled in such lands to both the warams.

5. As regards lands other than waste and private lands, the tenants and the landholder have the rights which they had prior to the settlement preserved, but subject to such modifications as might have been introduced by subsequent legislations. On this question, again, we saw in the last chapter how, the unhappy language of the Regulation XXV led to serious troubles and how the matter was set at rest by Regulation IV of 1822.

6. The landholders are not competent, except with the previous sanction of the government, to grant inams out of the lands comprising the estate so as to exempt any part of such lands from bearing their proportion of the public tax.

b. Mineral rights. So far as mineral rights within a zamindary are concerned, there is no specific provision of law stating that they rest in the zamindar as against the government ; but, that the Government do not claim any such rights, at any rate, as against zamindars whose

1. See also *Veera Badradu* v. *Subbavina*, 78 I C. 287.

estates have been settled, is clear from the policy adopted by them for the last one century and more. For instance, the Board's Standing Order No. 25 rule 1 provides, that no claim to minerals should be made on behalf of the state in estates held on sunnads of permanent settlement.[1]

Mr. Field in his Introduction to the Bengal Regulation says " He is entitled to rents from all lands lying within the limits of his Zamindary and the rights of mining, fishing and other incorporeal rights are included in his proprietorship "; and this passage is cited with approval by their Lordships of the Judicial committee in *Hari Narayin* v. *Sriram Chakravarthi*.[2] Also *Durga Prasad* v. *Brajanath*[3]; *Sashi Bushan Mitra* v. *Jyoti Prasad*;[4] and *Regunath Roy Marwari* v. *Rajah of Jheria*[5] and a number of other cases proceed on the footing that, a Zamindar is absolutely entitled to all mineral rights within his Zamindary. But, the actual point decided by their Lordships in these cases is, that when a grant is made by a Zamindar of a tenure at a fixed rent, although the tenure may be permanent, heritable and transferable, mineral will not be held to have formed part of the grant in the absence of express evidence to that effect."[6]

Estates not Settled

The position of the holder of an unsettled palayam or estate is very different from that of the holder of

1. P. 79 Vol. I 1920.
2. 37 C. 723 at 730 P.C.
3. 39 C. 696 P.C.=39 I.A. 133.
4. 44 C. 585=44 I.A. 46 P.C.
5. 47 C. 95=46 I.A. 158 P.C.
6. see 44 C. 585

a permanently settled estate with regard to both (*a*) and (*b*) which we have dealt with above. In the case of an unsettled poligar, there being no deed of permanent sunnad, whenever a dispute arises regarding the extent of his rights, it can be settled only by a reference to the deed of grant, if any, the custom or usage of the palayam, and the conduct of the poligar and of the Government in the past.

Prima facie, even in the case of unsettled palayams, the poligars will be entitled to all waste lands situated within their estates; and in so far as the peskush also has been fixed in recent years in regard to these palayams, it is certain that some definite arrangement exists between the poligars and the government in regard to the several heads of revenue—of salt and salt petre, etc.; and any difference between the Government and the landholder shall have to be settled with reference to it.

As regards mineral rights also, unlike in the case of permanently settled estates, there is no presumption, though, no doubt, any landholder is entitled to show that the right to minerals has been granted to him or that he has otherwise become entitled to such rights. Here, again, on the question of evidence and proof, the distination between an unsettled palayam or Zamindary, strictly so called, and any other class of holding, such as for example an inam village, coming within the definition of the term estate given in the Estates Land Act, may be material; for, while an unsettled palayam or Zamindary except for the deed of permanent sunnad practically stands on the same footing as a permanently settled estate, the position

of any other kind of holding, though definable as an estate, is very much different. In *Secretary of State* v. *Srinivasachariar*,[1] the question arose as regards an inam village. There, a village was granted as a Shrotriam inam in A. D. 1750 by the Nawab of the Karnatic. The grant provided that its purpose was that the grantee should appropriate the produce of the lands and pray for the welfare of the empire. The inam was enfranchised in 1865 and in or about 1905, the Government of Madras imposed and levied upon the shrotriamdars royalties in respect of stones which they had quarried in the village. It was contended on behalf of the inamdars, that they stood in the same position as Zamindars under a permanent settlement and as such were entitled to the mineral rights. Their Lordships of the Judicial Committee negatived this contention and held, that an inam grant may be no more than an assignment of revenue and even where it is or includes a grant of land, what interest in land passed to the grantee must depend upon the language of the instrument and the circumstances of the case; and that upon the true construction of the grant in the case, the full right to the quarries and minerals did not pass to the grantee and that consequently the Government was entitled to impose royalties on stone quarried in the village. And it may also be noted, that the provision in O. 25. rule i 2. (c) of the Board's Standing orders is in accordance with the ruling in the above case. The rule provides, that in lands held on inam tenure, where apart from the title deed issued by the Inam Commissioner, the original grant either expressly or by

1. 44 M. 421.

necessary implication made a conveyence of the state's right to minerals, no claim to such minerals shall be made on behalf of the state.

B. Transferability and Separate Registration

The Question of transferability and of separate Registration of the portion transferred in collector's Registers is governed by four small enactments; Regulation XXV of 1802, Regulation XXVI of 1802, Act I of 1876 and Act II of 1904. The first and the third deal exclusively with permanently settled estates; the second deals with estates not settled as also with non-estate lands; and the last deals with Impartible estates.

Section 8 of Regulation XXV of 18C2 provides as follows: Proprietors of land shall be at free liberty to transfer without any previous consent of the Government or of any other authority to whomsoever they may think proper, by sale, gift or otherwise their proprietary right in the whole or any part of their Zamindaries, provided they shall not be repugnant to the Hindu or Muhamaden law or to the regulations of the British Government. But unless such sale gift or transfer shall have been regularly registered at the office of the collector, and unless the public assessment have been determined and fixed on such separated portions by the collector, *such sale, gift or transfer shall have no legal force and effect, nor shall such transaction exempt a Zamindar from the payment of any part of the revenue by reason of the transfer, but the whole Zamindary shall continue to be answerable for the total land tax in the same manner as if no such*

transaction had occurred.[1] Similarly, section 3 of Regulation XXVI provides, that *transfers of lands made by individual persons without being registered in the registers of the collectors shall not be valid in courts of adalat; and such transfers of lands, being unregistered, shall not exempt the person in whose names the entire estates are registered from paying the revenue due to Government from such lands.* Now the question arises, what is the effect of the words printed in italics? On a first reading, the words undoubtedly lend colour to the view, that transfers not accompanied by a separate registration in the collector's registers are void not merely against the Government but as between the parties themselves. But, now, it has been held by the Privy Council in *Venkateswara Yettiappa Naicker* v. *Alagamuttoo Servagaran*[2] with regard to settled estates, and by a Full Bench of the Madras High Court in *Subhramanya* v. *Mahalinga*[3] with regard to other lands, that notwithstanding the generality of the language used, the sections do not affect the validity of transfers as between the parties but only saves the right of the Government. See also *Maharaja of Vizianagaram* v. *Collector of Vizagapatam*.[4]

Another important question which has arisen under these sections is, what is the nature of a permanent lease? or a grant of land in perpetuity subject to the payment of a jodi or quit rent? Is it a 'transfer' within the meaning of these sections so as to require separate regis-

1. The section is only substantially reproduced here.
2. 8 M. I. A. 327.
3. 33 M. 41.
4. 38 M. 1128 at 1131.

tration in the collector's registers? This question also is now well settled by the decision of the Privy Council in 8 Moor's Indian Appeals 327 and of the High Court in 38 Madras 1128. They have held, that neither a permanent lease nor a grant of land in perpetuity subject to the payment of a jodi (which is only a permanent lease at a favourable rent) can without doing violence to the language of the sections be construed as 'a transfer' within the meaning of those sections and therefore does not require to be separately registered.[1]

Act I of 1876 is merely supplementary to Regulation XXV of 1802 and lays down the procedure for separate registration. The following are the important provisions of the Act.

1. The alienor or alienee of any portion of a permanently settled estate may apply to the collector for its registration in the name of the alienee and for its separate assessment of land Revenue.[2]

2. The collector shall thereupon hold an inquiry as to the genuineness of the transfer.[3]

3. If on such inquiry the collector is satisfied that the transfer has taken place and all the parties to the transfer concur in the application to separate registration, and if objection is not taken by any person interested in the property or being taken is disallowed by the collector, the collector shall register the alienated portion in the name of the alienee and apportion the assessment of such

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1. The two cases referred to in fact deal with Section 8 of the Regulation XXV only. But they will govern section 3 of Regulation XXVI also.

2. S. 1.

3. S. 2.

portion in the manner provided by section 45 of the Revenue Recovery Act II of 1864.[1] And prior to 1914 there was also a further provision; that separate assessment in the case of estates held under istimrari sunnads or otherwise subject to the payment of a lump assessment should be subject to the sanction of the Board of Revenue. But, that provision as well as the corresponding provision in the Revenue Recovery Act has been repealed by Act VIII of 1914.

4. Any person aggrieved by the fact of separate registration, as well as any person aggrieved by the Collector's refusal to register, may sue in a civil court for a declaration that the registration ought not to be made or ought to be made as the case may be[2]; and the period of limitation for a suit under this provision is one year from the date of the order complained of.[3]

5. Any person aggrieved by the apportionment of the assessment may appeal to the Board of Revenue within ninety days from the date of declaration of such assessment; and the order of the Board shall be final.[4]

6. Also, the Governor in Council, may, at any time order a re-adjustment of the separate assessment on the ground that the original apportionment has been vitiated by fraud or material error.[5]

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1. That section provides that the amount of Revenue to be assessed on each division should be proportionate to its value and that for the purpose of apportionment, the collector may demand from landholders and kernams of villages accounts relating to the estate for a period of not less than three years.

2. Ss. 5 and 6.

3. A 14 of the Limitation Act.

4. S. 7.

5. S. 8.

From the above summary, we may see that under the Act the collector has got two distinct functions to perform, namely, that of separate Registration and of apportionment of Revenue. And the effect of provision 4 above (Ss. 5 and 6 of the Act) is, that the decision of the collector, in a case within his jurisdiction, whether for or against *separate registration* can only be questioned by a civil court; and neither the Board of Revenue nor the Government can exercise any revisional power over the collector's order.[1] The order of the collector regarding the *apportionment*, however, may be appealed against to the Board of Revenue and power is also reserved to the Governor in Council to order re-adjustment of the assessment, at any time,[2] on the ground of fraud or material error.[3]

Lastly, we come to the Impartible Estates Act II of 1904. We saw, that one of the provisions of section 8 of Regulation XXV of 1802 was, that a transfer must not be repugnant to Hindu of Mohomedan law or to the Regulations of the British Government. And this Act II of 1904 is such a regulation as is contemplated by that provision and may be briefly considered here. But, before considering its provisions, it may be worth our while to refer to its history as well.

Prior to 1888 the prevalent view with regard to an *impartible estate* was, that though the estate was by nature. impartible, the holder of such an estate was as regards his co-parceners in the position of the manager

1. *Robert Fischer* v. *The Secretary of State*, 22 M. 270 P.C.
2. (i.e.) no limitation.
3. 22 M. 270, P.C. supra.

of a joint Hindu family and therefore could not alienate properties belonging to the estate except for necessity. In 1888 a different view was adopted by the Privy Council and in *Sartaj Kuari* v. *Deo Raj Kuari*,[1] it was definitely laid down that an impartible estate was the absolute property of the zamindar for the time being and that his son had no right to question an alienation made by him.—That was the case of a gift. The principle involved in the above case was further extended to the case of testamentary disposition, by their Lordships themselves in *Venkatrao* v. *Court of Wards* (the first Pithapore case).[2] The doctrine has since been carried *by the case of Ramarao* v. *The Raja of Pithapore* (The second Pithapore case) to the length of holding that there being[3] no co-parcenery in an impartible estate, the junior members can establish a claim for maintenance only by proof of a custom entitling them to it.[4]

The Zamindary class in Madras felt that the cases in 10 Allahabad and 22 Madras having made the holders of impartible estates for the time being absolute owners thereof, some legislation should be made to check the Zamindar's power of alienating their estates with a view to preserve the estates and to safeguard the interests of future generations; and the efforts of the zamindary class in this direction, resulted in the passing of the Madras Impartible Estates Act II of 1904.

The Act applies to the whole of the presidency of

1. 10 A. 272=15 I. A. 51.
2. 22 M. 383=26 I. A. 83.
3. 41 M. 778=45 I. A. 148.
4. Mayne's Hindu Law p. 795 9th Edn.

Madras except the Districts of Malabar and South Canara. The Schedule to the Act gives a list of estates which are impartible for purposes of the Act: and section 4 provides, that the proprietor of an impartible estate shall have the same powers of alienation over his estate as the manager of a joint Hindu family who not being a father or grand father of the other co-parceners, has over the family properties. However, the proprietor may subject to the other provisions of the Act grant (1) sites for public charitable and public religious institutions and (2) mining or quarrying leases for terms not exceeding 60 years and leases of the pannai or homefarm lands for terms not exceeding 15 years. Section 6 further provides that the proprietor may not either alienate or encumber the estates by debts borrowed, beyond his lifetime even for paying arrears of revenue, unless he shall have first obtained the consent of the collector in writing for so doing.

C. Water Cess

The law and procedure relating to the levy of water cess is embodied in the Madras Irrigation Cess. Act VII of 1865 as amended by Act, V of 1900, II of 1913 and VI of 1920. The question of water cess being somewhat important, and the numerous cases that have arisen under the Act having mainly turned upon the interpretation of certain words used in the statute, it may be convenient to quote here the preamble and the first section of the Act. They run as follows:

Whereas in several districts of the Madras presidency large expenditure out of Government funds has been, and

is still being, incurred in the construction and improvement of works of irrigation and drainage to the great advantage to the country and of proprietors and tenants of land; and whereas it is right and proper that a fit return should, in all cases alike, be made to government on account of the increased profits derivable from lands irrigated by such works; it is enacted as follows.

1. (*a*) Whenever water is supplied or used for purposes of irrigation from any river, stream, channel, tank or work belonging to or constructed by, Government and also

(*b*) whenever water by direct or indirect flow or by percolation or drainage from any such river, stream, channel, tank, or work, from or through adjoining land irrigates any land under cultivation or flows into a reservoir and is thereafter used for irrigating any land under cultivation and in the opinion of the revenue officer empowered to charge water cess, subject to the control of the Collector, the Board of Revenue and the Government, such irrigation is beneficial to and sufficient for the requirements of the crop on such land,

It shall be lawful for the Government before the end of the revenue year succeeding that in which the irrigation takes place, to levy at pleasure on the land so irrigated a separate cess for such water and the Government may prescribe the rules under which such water cess as aforesaid shall be levied and alter or amend the same from time to time:

Provided that where a zamindar or inamdar or any other description of landholder not holding under a ryotwari settlement is by virtue of engagements with the Government entitled to irrigation free of separate charge, no cess under the Act shall be imposed for the water supplied to the extent of this right and no more.

provided also...[1]

A reading of the section and its first proviso shows that before the Government can charge cess on lands belonging to a zamindar, or inamdar three conditions must be satisfied, namely, (1) The irrigation must be effected by means of the water of a river, stream, tank or channel or work belonging to or constructed by Government: (2) If the water from such a source is received from indirect flow or by percolation or used after storage in an intermediate reservoir, the irrigation must, in the opinion of the Revenue officer empower to charge a water cess (subject to the control of the Collector, the Board of Revenue and the Government) be beneficial to and sufficient for the requirement of the crops. (3) The charge must not be contrary to any engagement between the landholder and Government whereby the latter is entitled to irrigation free of charge.[2] In one case, it was sought to be argued that in view of the language used in the preamble to the Act, these three conditions will not by themselves be sufficient, but that a fourth condition must be satisfied (*viz.*,) that the Government must have incurred some expenditure

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1. This proviso deals with lands held under ryotwari settlement.

2. *Secretary of State for India in Council* v. *Ambalavana Pandara Sannathi*, 34 M. 366.

either in constructing or improving the work of irrigation from or through which the water is taken for the purpose of irrigation. But, a Full Bench of the High Court negatived this argument and held that Section 1 of the Act does go beyond the preamble and enable the Government to levy water less for use of water derived from a natural stream belonging to Government, even though the Government might not have incurred any expenditure in connection therewith.[1] This view of the Full Bench has also been approved by their Lordships of the Privy Council in *Kandukuri Bala Surya Prasada Rao* v. *the Secretary of State for India in Council*, better known as the *Urlam case*.[2]

Now let us examine the conditions mentioned above one by one: *Condition.* (1) When can a river, stream or channel be said to belong to Government? The answer to this question, to some extent depends upon the interpretation of section 2 of Act III of 1905[3], the relevant portion of which runs as follows :.........the bed of the sea and of harbours, and creeks below high water mark, and of rivers, streams, nalas, lakes and tanks, and all canals and water courses, and all standing and flowing water.........save in so far as the same are the property,

(a) of any Zamindar poligar, mittadar, jagirdar, shrotriemdar or inamdar or any person claiming through or holding under any of them, or

(b)..

1. *Secretary of State* v. *Mahadeva Sastrigal*, 40 M. 58 F.B.
2. 40 M. 886.
3. The Land Encroachment Act.

(c) any person holding under a ryotwari tenure, including that of a jenmi in Malabar or a wargdar in South Canara, or in any way subject to the payment of land revenue direct to Government, or

(d) any other registered holder of land in proprietary right, or

(e)..

are and are hereby declared to be the property of Government, except as may be otherwise provided by any law for the time being in force, subject always.........to all natural and easement rights of other land-owners, and to all customary rights legally subsisting.

The above question definitely arose in 1911 in *Gandurkuri Mahalakshmanama Garu* v. *The Secretary of State for India in Council.*[1] Their Lordships Justice Miller and Munro, after reviewing the English and the Indian authorities on the point held, that in Madras by virtue of section 2 of Act VII of 1905, the ownership of a river or stream except where it happens to run through one man's land from source to mouth, vests only in the Government, although the bed as well as the banks of the river or stream may belong to the adjoining land holder. The ratio of their decision is explained by their Lordships in the following passage:

"The provisions of section 2 (of Act III of 1905) are clear enough and we cannot ignore a declaration con-

1. The Urlam Case in the High Court, 34 M. 295.

tained in that section, because the other provisions of the Act deal principally with the question of encroachments on public land. So far as this case is concerned, the provisions of section 2 amount to a declaration, that subject to the easement and natural rights of other landholders, all standing and flowing waters which are not property of any one else are the property of the Government. Now, clearly, the water of the Vamsadhara river does not belong to any one else; the owners of the land on the banks of the river do not own the water: their natural rights as defined by the Easements Act is saved by Act III of 1905, but it is not contended that the water is their "property". It follows that it is the property of the Government. And if the body of water forming the river is the property of the Government, the river, it seems to me, belongs to the Government within the meaning of Act VII of 1865, even though the bed may be vested in the owners of land along with the banks, so as to give them the right to accretions or lankas forming therein."[1]

This case went up on appeal to the Privy Council: and their Lordships reversed the decision of the High Court on another point and left open the question relating to the ownership of the river Vamsadhara involved in the case. For some years to come, therefore, the decision of their Lordships Justice Miller and Justice Munro in 34 M. 295 remained the governing authority and caused a deal of trouble both to judges and to lawyers, not to speak of many of the Zamindary clients. But, finally,

[1] 304.

when the question again pointedly arose in connection with the River Marudai in the District of Madura, the matter was referred to a full bench consisting of five judges.[1] The order of reference to the Full Bench was: Is a river which after rising in certain government hills, flows through ryotwari tracts and then through a Zamindary and lastly through a government village, 'a river belonging to Government' within the meaning of Madras Act VII of 1865 at the place where it passes through the Zamindary wherein both the bank and the bed of the river belonged to the Za mindar.

And their Lordships after an exhaustive review of the authorities on the point unanimously held, that the case in 34 M. 295 was wrongly decided and that the question must be answered in the negative. The following is the short judgment of his Lordship Justice Couts-Trotter,[2] which beautifully sums up the grounds of the full bench decision and points out the erroneousness of the decision in 34 Madras.

"What the judges did in the Urlam case,[3] was to apply the English common law conception to the saving clause, with the result, that they held that no one had any property in flowing water except perhaps in the abnormal case of a river which from source to mouth runs through one man's land. The result was that all flowing water would become automatically the property of Government. This is in itself a starting conclusion; but it involves a still more startling process. We are to

1. *Chinnappa Chetty* v. *Secretary of State*, 42 M. 239.
2. One of the 5 judges.
3. 34 M 295.

suppose that the draftsmen and the enactors of this short local Act designed, not directly but by mere intendment, to introduce a wholly new juridical conception, viz., that of property in flowing water without reference to any question of ownership of the banks or bed of the river in which it flows. That seems to me to be abnoxious to all the principles pointed out by the House of Lords in *Nairn v. The University of St. Andrews.*[1] In my opinion, *Kandukuri Mgha Lakshmama* v. *Secretary of State* was wrongly decided and I think that the Act of 1905 when it spoke of water 'belonging' to any one, it only used the term in the lax but commonly understood sense of water over which rights were exercised by virtue of ownership of bed or banks. This construction necessitates no new conception of property in water; for flowing water will only go to government as a *bonum vaxus*, when the bank or banks are *bonum vacantia*, and it will become property only in the sense with which every one is familiar and which is correlated to their property in the banks or bed."[2]

It must, therefore, now be taken as settled law, that the ownership of a river or channel depends upon the ownership of the bed and the banks thereof and consequently when the latter does not vest in the Government, at the place where the water is taken, the Government has no right to levy any water cess.

One other question which arises as regards the first condition is, what is meant by saying " water is supplied or used for purposes of irrigation." Prior to the year

1. 1909 A.C. 147.
2. at pp. 267 and 268.

1900, it was thought that where lands were irrigated by water from a Government source, not flowing directly but indirectly by percolation, the Government is not entitled to levy any water cess on those lands. But, now, the amending Act V of 1900 has made it clear, that even in such a case the Government will be entitled to levy water cess. However, the phrase "irrigation by percolation" is itself not again very clear. In *Secretary of State* v. *Mahadeva Sastrigal*,[1] the question arose whether the phrase will cover cases, where subsoil water derived by percolation from a river or channel owned by Government is taken by roots of trees. It was argued on behalf of the respondent, that it will not and that the word 'irrigation' refers only to cases where water from a river or channel owned by Government actually comes upon the surface of the land on which cess is sought to be levied, whether by flow direct or indirect or by percolation. But, their Lordships refused to accept that argument and held, that the words "irrigation by percolation" means not only irrigation by means of water flowing on the surface of the land irrigated, but cover also cases where subsoil water is taken by roots of trees.

Before we pass on to consider the next condition, it may also be interesting to note the ruling in *Secretary of State* v. *Swami Naratheswarar*.[2] In that case, certain dry lands belonging to the respondent was submerged by water flowing from a Government source and by reason thereof, he was compelled to raise wet crops, which he did with the help of water stored up by him in his

1. 40 M. 58 F.B.
2. 34 M. 21.

adjoining land out of the flood. The question was, whether by reasan of the fact that the water from the Government source was not taken by the respondent voluntarily, but that it flooded his lands practically against his will, the Government will not be entitled to levy any water cess on the lands. And it was held, that despite the fact stated above, the Government will be entitled to levy a cess.

Condition (2)

The leading case on this part of the subject is the Full Bench case of *Secretary of State* v. *Mahadeva Sastrigal* reported in 40 M. 58.

The three important points decided in the case are (1) that before any cess is levied by Government under the section, it is not obligatory on the part of the Collector to certify that the irrigation is beneficial to the lands;

(2) that the opinion of the Collector that the irrigation in any particular case is beneficial to the land is not a judicial one and therefore cannot be revised by a Civil Court,

(3) that the words "irrigation by percolation" mean................., (which we have already considered).

Condition (3)

Lastly, it is by no means clear as to what classes of cases, the proviso to the section which embodies this condition is intended to cover. For instance, it does not say, what the nature of the engagement should be; nor does it specify any method by which the rights of a land-holder under an engagement is to be determined. But

the judicial decisions have so far established the following propositions : 1. The engagement need not be express, and it may be implied from the course of conduct of the Government as well as that of the land-holder.[1] Where, for instance, a right to take water is proved *aliunde*, though there may be no express contract on behalf of the Government not to levy any charge, an "engagement" within the meaning of the proviso will be implied.[2]

2. The permanent settlement is, so far as permanently settled estates are concerned, an engagement with the Government contemplated by the exception ; and the effect of the settlement is to vest, in most of the cases, the works of irrigation situated within the Zamindaries, in the zamindar along with the lands comprising the zamindary. But, it is open to the Government to show, that in particular cases, they had specially reserved to themselves the right to all or any of the water courses and irrigation works.[3]

3. Where the right of a zamindar to take water for purposes of irrigation from a Government source through certain channels belonging to him is established and nothing further appears, the extent of such a right is to be measured by the size of the channels and the nature and extent of the sluices and weirs, if any, governing the flow of water, but not by the extent of lands under irriga-

1. *Katragaddha Radhakrishna Naidu* v. *Secretary of State for India in Council*, 24 M. L. J. 678.

2. *Sri Rajah Simhadri Raju* v. *Secretary of State*, 39 M. 67 following *Urlam case* (High Court) 34 M. 295 and *Venkatramanamma* v. *Secretary of State*, 37 M. 366.

3. *Kandukuri Bala Surya Prasada Rao* v. *The Secretary of State*, 40 M. 886 P.C. (The Urlam case).

tion at the time of the engagement.[1] For, when once the water is lawfully taken into the channels, the Government has no further rights in it and the zamindar will be entitled, by an economic use of the water, to extend the irrigation as much as he likes.[2]

4. Where a zamindar has a right of easement in respect of his zamindary to the use of water from an artificial channel flowing through the estate of a neighbouring zamindar, and the estate of the latter zamindar for some reason or other comes to vest in the Government, such estate will still be subject to the right of easement in favour of the first zamindar: and the Government will not be entitled to levy any water cess on the estate of such first zamindar on the ground of their ownership of the channel along with the rest of the newly acquired zamindary.[3]

And we may with advantage wound up the subject of water cess with a reference to the leading case of *Kandukuri Bala Surya Prasada Rao* v. *The Secre-*

1. Ibid.
2. Ibid and.
3. *Secretary of State* v. *Maha Rajah of Bobbili*, 37 M.L.J. 724 P.C. In this case the actual facts were these: two estates (that of the Maharaja of Bobili and that of Palkonda) were situated contiguous to each other and the Maharaja of Bobbili had an easement right to irrigate his lands from an artificial channel running through the other. The Government forfeited the estate of the latter for rebellion. The question arose, whether by reason of the Government having acquired the ownership of the latter zamindary including the channel, they were not entitled to levy water cess under Act VII of 1865. Their Lordships of the Judicial Committee held that on forfeiture, the Government took the latter zamindary only subject to the right of easement in favour of the other and that therefore an engagement within the meaning of the Act should be deemed to exist between the zamindar of Bobbili and the Government.

tary of State (the Urlam case)[1] which we have already referred to many times. The facts of the case were these: The Urlam estate had no separate existence prior to the Permanent Settlement. Till then, it was part of a bigger District bounded in part by the River Vamsadhara. Sometime prior to the permanent settlement, extensive works were carried out for the purpose of supplying the District with water from the river. These works included four main channels whose names are immaterial for the purpose of the case. Each channel derived its water by means of weirs and sluices from the river Vamsadhara and the water was distributed throughout the District by means of branch channels. In 1802, the Government carved out of this District four zamindaries of which Urlam was one, fixed their permanent assessment or Jamma and sold them by public auction. The sunnads issued to the purchasers did not mention any water rights but merely recited that the zamindars were bound to encourage their ryots and to improve and extend the cultivation of the lands. The Urlam zamindary was purchased by the appellant's predecessor in title at a revenue sale and the other three were bought at various times by the Government itself. Of the four channels mentioned above, the sluices of only one of them were situated in the appellant's zamindary, but he and his predecessors in title had been using the water from all the four channels for irrigating their lands. The question arose, whether by reason of the appellant having extended the cultivation of his lands by a considerable extent, the government could impose a "separate charge"

1. 40 M. 886.

on his zamindary. To answer that question, three points had to be decided.

i. At the place where the water was taken by the channels from Vamsadhara, to whom did the River belong—to the Government or to the zamindar?

ii. Assuming the river did not belong to the Zamindar but to the Government, was there any engagement between the Zamindar and the Government within the meaning of the proviso to section 1 of the Act VII of 1805?

iii. If there was an engagement, what is the extent of the Zamindar's right thereunder? Will the extension of cultivation by itself, form a ground for the levy of a separate charge?

The first point was decided in favour of the Government by the High Court, but their Lordships of the Privy Council after throwing considerable doubt upon that decision, left the matter open, because it became unnecessary to decide that point, by reason of the view which they took with regard to the other two points.

On the second point they held, that the Permanent Settlement was an engagement with the Government within the meaning of the proviso and that the effect of the settlement was, to vest the channels with their heads and head sluices and their banks and subsidiary channels and the reservoirs, in the Zamindars through or within whose Zamindaries they respectively passed or were situated, and to give to the zamindar the right or easement of taking water from the river for irrigation purposes.

iii. And on the third point they held, as we have already seen, that the right of the zamindar under the

sunnad was to be measured by the size of the channel and the nature and extent of the sluices and weirs governing the amount of water entering the channel and not by the purpose for which the grantor or his tenants had been using the water prior to the grant; and there being no evidence that more was being taken from the river than would be justified by the sunnad as construed, the Government had no right to levy water cess.

D. Village Officers

The statutes which contain the law relating to village officers in proprietary estates are (1) Regulation XXV of 1802. (S. 11 alone); (2) Regulation XXIX 1802; (3) The Proprietary Estates Village Service Act II of 1894; and (4) the Hereditary Village Officers Act III of 1895.

The village officers in a proprietary estate fall into three classes.

A.	1. Village Headmen 2. Village accountants, and 3. Village watchmen or police officers.	Whether their offices hereditary or not, whether emoluments have been attached to them or not.
B.	1. The Village Carpenter 2. The Village Blacksmith 3 The Village Barber 4. The Village Washerman 5. The Village Potter 6. The Village Astrologer or 7. The Village Prohit or priest	hereditary and with emoluments attached to their offices.

and

C.	Hereditary village officers other than those mentioned in A and B. It seems 'Paiks' and 'Doras' of Goomsur and Parlakimedi in Ganjam have been held to belong to this class.[1]	hereditary.

Section 11, of Regulation XXV of 1802 and the provisions of Regulation XXIX. (The Kernam's Regulation) which deal with the office of Kernam, now apply only to such of those permanently settled estates to which the Proprietary Village Service Act II of 1894 has not been extended.[2] The appointment, removal and punishment of officers belonging to Classes A and B are respectively dealt with by the Proprietary Village Service Act. II of 1894 and the Hereditary Village Officers Act, III of 1895. The appointment, removal and punishment of officers belonging to class B are, however, dealt with neither by the one nor by the other of these Acts and they are therefore entirely outside the scope of these Acts. And lastly, suits for office or for emoluments preferred by hereditary officers, servants and artizans of all the classes are exclusively governed by the provisions of Act III of 1895. But, here it must be clearly remembered, that Act III of 1895 will apply only if two conditions are satisfied, namely, (1) the office in question must be hereditary and (2) emoluments must be attached to the office. Having already considered section 11 of Regulation XXV of 1802 and the provisions of regulation XXIX of 1802 in chapter I in connection with the Introduction of the

1. B. S. O. 147 at p. 314, 1920 Ed.
2. S. 2. Act III, 1895 and S. 3, Act II. of 1894.

Permanent settlement, we may now summarise the important provisions of the Act II of 1894 and of the Act III of 1895 as follows.

ACT II OF 1894

(AS AMENDED BY ACT. IV OF 1900 AND ACT. III of 1914.)

The Proprietary Estates Village Service Act

i. Preliminary.

The Government may, by notification, extend this Act or any portion thereof to any estate within the presidency of Madras, and to the office of any of the following village officers: (1) village accountants (2) heads of villages and (3) village watchmen or police officers; and upon the extension of this Act or any portion thereof to the office of village accountant in any estate, section II of Regulation XXV and Regulation XXIX of 1802 shall cease to be in force in such estate.

ii. Village establishment, their strength, appointment and control.

1. The District collector may require the proprietor of any estate to prepare and send to him a register containing particulars of all the village officers and servants employed in the estate; and within three months of any such requisition, the proprietor must so prepare a register and forward it to the District collector.[1]

2. In every village, there should be maintained so many and such village officers as the District Collector, subject to the orders of the Board of Revenue may direct.[2] Every vacancy caused by the death or resignation of a village officer must, within thirty days of the occur-

1. S. 5. 2. S. 7.

sence thereof, be reported to the Revenue officer in charge of the division within which the estate is situate.[1]

3. Whenever a vacancy occurs in a village office or the District Collector directs the appointment of a new or additional village officer, the proprietor must, within six weeks, appoint a suitable person and report the fact of appointment to the Revenue Divisional officer.[2] If the Revenue Divisional Officer considers the person appointed to be disqualified on any of the grounds mentioned in the next paragraph, he may record his reasons for so doing and call upon the proprietor within three months of the report to appoint another person instead.[3] If the proprietor fails to appoint another person within another six weeks, or he appoints another but even that another is not in the opinion of the Revenue Divisional Officer a fit and proper person, he may himself appoint a qualified person. Also, where the propritor fails to appoint a person even at the first instance, the Revenue Divisional Officer can appoint one who in his opinion is duly qualified.[4] Whenever an appointment is disallowed, an appeal will lie to the District Collector or to the Board of Revenue according as the officer disallowing the appointment is the Deputy collector or the District collector.[5]

4. In making an appointment the following rules should be observed:[6]

(a) No person shall be eligible for appointment, who is a female or a minor or one physically and mentally

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1. S. 8.
2. S. 9.
3. S. 11.
4. S. 11 (2).
5. Ibid 3.
6. S. 10.

incapable of discharging his duties or one who has not passed the tests prescribed by the Board of Revenue or one convicted by a criminal court and is considered unfit by the Revenue Officer or Collector.

(*b*) The succession to all hereditary offices shall be traced by the general custom and the rule of primogeniture governing succession to impartible estates.

(*c*). When the next heir is not qualified under (*a*), the proprietor may appoint the person next in order who is so qualified; and if however there is no person qualified in the whole line of succession, he may appoint a stranger. If the person who would otherwise be entitled to succeed to the office is a minor, the proprietor should submit his name to the Revenue Divisional Officer for registration as the heir of the next male holder, and appoint some other person to discharge the duties of the office till the heir becomes a major and is appointed. If, however, the person registered as heir dies or remains disqualified for some reason for more than 3 years after attaining his majority, the office may be permanently filled up by some other person under rules (*a*), (*b*) and the first part of (*c*).[1]

(*d*) Where a village officer is dismissed, no one who is an undivided member of the family of the dismissed may be appointed to the post, so long as the dismissed is alive. When however the dismissed person dies, the appointment shall be made in accordance with the rule mentioned in (*b*). Similarly, in the case of suspension, no undivided member of the family of the suspended

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1. S. 13.

person may be appointed, till the latter returns to duty or dies, whichever may happen earlier.[1]

5. The collector may, for administrative convenience, after considering the opinion of the proprietors and of the officers affected and subject to the sanction of the Board of Revenue, amalgamate two or more villages or separate a village into two or more and issue necessary orders for the reduction of the staff or the appointment of new officers.[2]

6. (a) A proprietor empowered in this behalf by the Board of Revenue may after inquiry fine a village officer for misconduct, neglect of duty etc. to the extent of three rupees. Where an officer has been fined under the above provision, an appeal will lie to the Revenue Divisional officer within one month of the date on which a copy of the reasons for the punishment is furnished by the proprietor to that officer and the decision of the Revenue Divisional Officer will be final. The powers conferred on the proprietor by the Board may at any time be withdrawn.[3]

(b) District Collector or the Revenue Divisional Officer on the other hand may not only fine, but suspend or dismiss a village officer for misconduct, negelect of duty etc. and furnish such village officer with a copy of the reasons for his order. Here again, an appeal will lie to the Board of Revenue or to the District Collector according as the order is made by the District Collector or the Divisional Officer. The periods of limitation for these

1. S. 12.
2. Ss. 6 and 15.
3. S. 16.

appeals are respectively three months and one month. A second appeal will also lie against the decision of the District Collector to the Board of Revenue within three months of such decision. And in any case, the decision of the Board of Revenue will be final.[1]

iii. Remuneration of the Village Officers.

7. The Government may after such date as it notifies in this behalf, enfranchise all or any of the village service inams which have been either granted or recognised by them ; and similarly the proprietor or his representative may, after such date resume all or any of the inams granted by the proprietor for village service.[2]

8. If in any estate, the cost of village establishment has been deducted in fixing the peskush, and the government now wants to take over to itself the burden of maintaining such establishment, the government may enhance the peskush, so as to make it equal to the amount which would have been the proper amount but for the above reduction ; and once such an enhancement is made, the liability of the proprietor to pay the village officers will cease. And conversely, where the liability to maintain any office is still left with the proprietor but no allowance has been made for the cost of maintaining such office in fixing the peskush, the proprietor will be entitled to a proportionate reduction in his peskush.[3]

9. After the date notified by the Government in this behalf, the village officers should be paid fees according to the scale fixed by the Board of Revenue ; and all fees and contributions demandable in an estate for the

1. S. 16.
2. S. 17.
3. S. 27.

remuneration of village officers will cease and determine absolutely.

iv. Penalty.

10. Any proprietor who wilfully omits to furnish a register as required by provision 1 above, or submit the name of a minor heir as required by provision 3 (c) above, will be liable to the imposition by the District Collector of a penalty not exceeding one hundred rupees.

11. An appeal will lie within three months against every penalty imposed under the above provision to the Board of Revenue.

v. Jurisdiction of a Civil Court.

12. No Civil Court will have authority to take into consideration or decide any question regarding the rates or amounts fixed, imposed or levied under this Act.

ACT III OF 1895.

The Hereditary Village Officers Act

The provisions of this Act relating to proprietary estates may be divided into three sets ; the first deals with the appointment, suspension and removal of officers falling under class C of the table given at the beginning of this Chapter ; the second deals with the succession to offices falling under class B, but lays down no definite rule ; and the third deals with the jurisdiction and procedure relating to all suits and appeals both under this Act and under the Proprietary Estates Village Service Act and is therefore common to all the classes A, B and C.

i. Appointment, Suspension and removal of officers falling under Class C.

1. When any vacancy occurs in a proprietary

estate, to any of the offices falling under class C the proprietor shall fill up the vacancy in accordance with the following provisions[1] :

(*a*) No person shall be eligible for appointment who (*a*) is not of the male sex, or (*b*) has not attained the age of majority or (*c*) is not physically and mentally capable of discharging the duties of the office.[2]

(*b*) The succession shall devolve in accordance with the law or custom ,applicable to the office in question at the date on which the Act came into force.[3]

(*c*) When the next heir is not qualified under (1) above, the proprietor shall appoint the person next in order who is so qualified, and in the absence of any such person in the whole line, he may appoint any stranger.

(*d*) When the person who would otherwise be entitled to succeed to the office is a minor, the proprietor shall register the minor as the heir of the last holder and appoint some other person till the minor attains majority ; but if the minor dies or on attaining majority he proves to be disqualified, the proprietor shall permanently fill up the vacancy according to rules (*a*) to (*c*) above.

2. (*a*) A proprietor may on his own motion or on complaint and inquiry, suspend, dismiss or remove the holder of any of the offices mentioned in class C on the ground of misconduct, neglect of duty etc.[4]

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1. S. 11.

2. Note here that the fourth disqualification mentioned in Act II of 1894 regarding the appointment of persons to offices forming class A. (*viz.*) conviction in a Criminal Court, is not mentioned here.

3. Here again note, the rule of primogeniture is prescribed by Act II of 1894 with regard to offices forming class A.

4. S. 7.

(*b*) Also a Collector may on his own motion or on complaint and inquiry suspend, dismiss or remove the holder of any of those offices on the same grounds.[1]

(*c*) However, the powers conferred on the Collector by clause (*b*) above shall not be exercised, unless, for reasons to be recorded in writing the Collector is satisfied that the Proprietor concerned has neglected to exercise in an adequate manner the powers conferred on him by clause (*a*).[2]

ii. Succession to village offices falling under class, B.

3. The succession to village offices of this class shall devolve in accordance with the law or custom applicable thereto at the date on which this act came into force.[3]

iii. Jurisdiction and procedure relating to suits and appeals.

Any person may sue before the Collector for the recovery of or the emoluments attached to any of the offices mentioned in classes A, B and C; and a minor may sue before the Collector to be registered as heir of the last holder of any such office.[4]

5. (*a*) No suit shall be entertained for a mere declaratory decree.

(*b*) When one of the facts in issue in any suit is, whether the emoluments of an office consist of land or the assignment of land revenue payable thereon, the Collector shall decide the claim on the assumption that the emolument consisted only of the assignment. But

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1. S. 7 Here note: the word 'fine' is not found either in (*a*) or in (*b*)--compare with 6 (*a*) & (*b*) under Act II of 1894.

2. S. 9.

3. S. 12.

4. S. 13.

the claimant will be at liberty to institute a suit in a civil court to recover the land itself.

(c) If during the trial of a suit, it appears to the Collector that the claimant is not eligible for appointment under rule (6) mentioned above or rule 3 (a) mentioned under Act II of 1894, he shall pass an order rejecting the plaint.[1]

6. (a) The period of limitation for a suit under this Act is 3 years from the date on which the cause of action accrued ; but where the claimant is a minor, the period shall begin to run only from the date of his attaining majority.[2]

(b) The period of limitation for the execution of a decree or order passed under this Act is one year from the date of such decree or order ; where however the decree was appealed against, the period shall commence from the termination of the appeal.[3]

7. (a) The Board of Revenue, may, with the approval of the Government, make rules not inconsistent with this Act and Act II of 1894, in regard to matters mentioned in S. 20 of this Act.

(b) The trial of suits under the Act are to be regulated by rules framed under clause (a) and those contained in S. 16 of the Act.

(c) Decrees passed under the Act may provide for payment of costs according to the scale fixed by the Board of Revenue.

8. If, before or during the hearing of a suit or of

1. S. 13.
2. S. 14.
3. Ibid.

an appeal, or of an execution, any question of law or of usage having the force of law or of the construction of a material document arises and the officer trying the suit or appeal or executing the decree feels reasonable doubt on the matter, he may refer it to the opinion of the Board of Revenue. The Board of Revenue, shall, after giving the parties an opportunity of being heard, if they so desire, decide the point and transmit a copy of its judgment to the referring officer, and the decision of the referring officer shall follow such judgment and shall be final.[1]

9. From every order or decree passed under rule 5 above, an appeal will lie to the District Collector or to the Board of Revenue according as the decree or order was passed by a subordinate of the District Collector or by the District Collector himself. The period of limitation for such appeals is one month and three months respectively.

10. If the officer to whom the appeal is presented happens to be the officer who passed the decision in another capacity, he shall report the fact to the District Collector, or if he himself is a District Collector to the Board of Revenue; and the District Collector or the Board of Revenue shall dispose of the appeal.[3]

11. The District Collector may transfer any suit pending on the file of one Divisional officer to his own file or to the file of any other Divisional Officer, or to the file of an Assistant or Deputy Collector in charge of a division.[2]

1. S. 18.
2. S. 24.
3. S. 15.

12. (*a*) No Civil Court shall have authority to take into consideration or decide any claim to succeed to any of the offices specified in Classes A, B, C or any question as to the rate or emoluments of any such offices, or except as provided for by rule 5 (b) above, any claim to recover the emoluments of any such office.

(*b*) But, where in any suit the defendant has pleaded before the Collector that a revenue Court has no jurisdiction, on the ground that no emoluments appertain to the office in question, and on appeal, the appellate authority has decided adversely to that plea, the defendant may institute a suit before the Civil Court to set aside the decree of the appellate Revenue Court on the said ground and no other.[1]

Recovery of Revenue

The main provisions of the law relating to the recovery of revenue in regard to estates both settled and unsettled are now contained in a few sections of Regulation XXV of 1802 and in the Revenue Recovery Act II of 1864; and such of those provisions which relate particularly to *estates* as distinguished from other kinds of holdings may be briefly summarised as follows.[2]

1. The landholders are bound to pay regularly in the current coin of their province the amount of assessment fixed on their lands; and in the case of estates permanently settled, no remission of any kind whatever

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1. S. 21.

2. The rest of the provisions being common both to estates and ryotwari lands are dealt with in the chapter dealing with ryotwari tenure.

will be allowed on the ground of drought, inundation or other calamity of season.[1]

2. Where a Zamindar has transferred a portion of his Zamindary in favour of another, but that the portion transferred has not been registered in the name of the transferee in the Collector's register, and its assessment separately fixed, not only the portion transferred or not transferred, but the entire Zamindary will remain answerable to the total land tax as if no transfer has taken place.[2]

3. The revenue is payable to the collector or such other officer empowered by him in this behalf on or before the dates at which it falls due according to the terms of the sunnad or other engagement and where there is no sunnad or engagement according to local usage.[3]

4. The revenue due from the proprietors of estates should ordinarily be paid into the taluk or other office in which the demand collection and balance accounts of the estates concerned are maintained. Where, however, such accounts are kept in the collector's office, the payment may be made, in the alternative, in the taluk where the estate is situated. In rare cases, where the Accountant-General considers, that it is desirable that a zamindar should be permitted to pay his peskush into the Imperial Bank of India or in a district different from that where his estate is situated, the payment can be so made,

1. S. 6, Regln. XXV of 1802.
2. S. 8 *Ibid.*
3. S. 3, Rev. Rec. Act, II of 1864.

provided that the information thereof is sent by the zamindar to the Collector by post the same day.[1]

5. Where the defaulter is one holding under a sunnad-i-milkeyat-istimrar or other similar instrument, the mode of recovering the arrear shall be in accordance with the terms of such sunnad. In the case of other defaulters, the Collector may proceed according to his discretion.[2]

6. In the case of permanent sunnad holders, their personal property should in the first instance be attached and only ultimately their lands.[3]

7. Where only part of a landed estate held under a permanent sunnad, or otherwise subject to the payment of lump assessment, may be sold, the assessment upon such part shall be apportioned by the collector previous to the sale. The apportionment must be such that the assessment on the two parts are proportionate to their values.[4]

8. Any apportionment made under the previous rule shall not be valid until it is confirmed by the Board of Revenue by an order in writing.[5]

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1. Board's Standing Order, 35 (3).
2. S. 6 *Ibid.*
3. S. 7, Reglo. XXV of 1802.
4. S. 45. Act II of 1864. The former part of this above provision has been repealed by Act VIII of 1914.
5. S. 48, *Ibid.*

CHAPTER III

The Estates Land Act

(Act 1 of 1908.)

This Act, as we have already seen in the first chapter, is a *fitting sequel to the long history of previous legislation* made for the purpose of ameliorating the condition of ryots in estates, and contains for the first time a specific declaration of the substantive right of the ryots in the soil which they cultivate. And as has been pointed out by a Full Bench of the High Court, the dominant policy of the Act is to assure the ryots or cultivators of zamindary lands in the possession of their holdings, on payment of a fair and customary rent, without their being subject to ejection by the landlord at his will. But it lacks the clarity of arrangement and the precision of ideas which must characterise an important legislation such as the Estate Land Act is. For instance, in several places, we find provisions which, without doing some violence to the language used, cannot easily be reconciled with each other. We may, therefore, for convenience collect and study the provisions of the Act under the following few heads :—

1. Preliminary.
2. Definitions.
3. General rights of Landholders and of Ryots.
4. Pattas and Muchilikas.
5. Rent.
    - i. General.
    - ii. Payment and Deposit.
    - iii. Appraisement and Division of Produce.

iv. Recovery of rent.
v. Enhancement of rent.
vi. Reduction of rent.
vii. Commutation of rent.
viii. Alteration of rent with area
ix. Trespassers on ryoti lands.

6. Repair of Irrigation works.
7. Sub-division and Transfer of holdings.
8. Record of Rights and Settlement of Rents.
9. Relinquishment and Ejectment.
10. Non-occupancy ryots.
11. Landholder's private land.
12. Jurisdiction and Procedure.

1

Preliminary.

The Act came into force on the first day of July 1908 and it extends to the whole of the Presidency except the Town of Madras, the District of Malabar and the portion of the Nilgiri District known as the South East Wynaad. But, like every other piece of substantive legislation, this Act did not affect the rights which had accrued before the enactment came into force.

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Definitions.

Estate. "*Estate*" means.

(*a*) any permanently settled estate or temporarily settled Zamindari;

(*b*) any portion of such permanently settled estate

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* S. 3 (2)

or temporarily settled Zamindari which is separately registered in the office of the collector;

(c) any unsettled Palaiyam or Jagir.

(d) any village of which the land revenue alone has been granted in inam to a person not owning the kudivaram thereof, provided that the grant has been made, confirmed or recognised by the British Government, or any separated part of such village.

(e) any portion consisting of one or more villages of any of the estates specified above in clauses (a), (b) and (c) which is held on a permanent under tenure.

The settlement referred to in clause (a) above must have been effected formally and there should be some recorded evidence of it. Where, therefore, certain ryotwari lands belonging to government were transferred to a Zamindar in lieu of monetary compensation or reduction of peskush for acquisition by Government of other lands forming part of the estate of the Zamindar, it was held by the Privy Council that the lands so transferred did not *ipso facto* become part of the estate and that a suit to eject the tenants thereof could be maintained in a civil court.

Then, as regards the term Jagir used in clause (c), there was some difficulty. The question arose in *Sam* v.

1. *Zamindar of Sanivarapupet* v. *Zamindar of South Vallur*, 42 M. 355, P. C. (Lord Dunedin). Also known as *Parthasarathi Appa Rao* v. *Surya Narayana*.

Ramalinga Mudaliar,[1] whether a grant of land revenue made by the Nawab of Carnatic to a member of his family for subsistence is a jagir within the meaning of this clause ; and their Lordships Couts Trotter and Srinivasa Iyengar JJ. in answering the question in the negative explained the scope of the clause as follows :

"………The jagirdar was in a large number of cases, exercising control over the tract assigned to him and was administering the same ; he in fact was exercising governmental functions in subordination ; it may be, to a superior, and was holding his jagir on condition of military or political service. There were cases, however, of jagir grants, where the land revenue was assigned merely for private enjoyment, as for instance, subsistance, and these cases are now indistinguishable from ordinary inam grant ; and as regards these, I think, the principle applicable to inams ought to be applied in determining their character, as estates, for the purpose of the Estates Land Act. It is only the first class of jagir grants that came subsequently to be classed along with ordinary Zamindaries and palayams, and I think it is to such estates that clause (c) applies."[2]

Clause (d) deals with inams or grants of land revenue only ; so that, where it is found that both the melwaram and kudivaram rights in certain lands have been granted to a person, the lands will not constitute an estate within the meaning of this clause.[3] The question

1. 40 M. 664.
2. Per Srinivasa Iyangar J. at p. 669.
3. *Naina Pillai Marakayar* v. *Ramanathan Chettiar*, 47 M. 337. P. C.

of presumption regarding these grants we have already considered in the Introduction; and it may here be sufficient to note that the word "recognised" which is used in the clause implies something more than mere acquiescence, and means something done by the Government as for instance by acceptance of service, jodi or the like.[1] Also the last portion of the clause is important which makes it clear that the Act applies not only to whole estates, but also to parts of an estate.[2] But the words "any separated part of such village" will not always make a few acres of land the land revenue of which has been granted an inam, an estate within the meaning of the Act; for the words really mean 'a separated part of a village, of which village the land revenue alone has been granted in inam: so that, unless the land *revenue of the whole village has been granted in inam*, any part of such village will not form an estate.[3]

In one case, it was argued that the grant recognised by the Government implied a reversion in the crown and that where there was no such reversion, the grant would not come under the clause. But that argument was negatived and it was held that the clause did apply to inam grants in which no reversionary right at all vested in the Government.[4]

Land holder: "Land holder" means a person owning an estate or part thereof and includes every person

1. *Ibid.*
2. *Appayya* v. *Ramachandra Raju*, 27 M.L.J. 490.
3. *Muniappa Reddi* v. *Subba Rao*, 25 I.C. 8: also *Mohammambal* v. *Davoosa*, 23 I.C. 859.
4. 40 M. 389 F.B. *infra*.

entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor in title or any order of a competent court or of any provision of law.

Here, it must be noted that "Landholder" as defined above is much wider than "the holder of an estate." For instance, the former includes, while the latter does not, the usufructuary mortgagee of an estate, the sub-lessee or the cowldar of the landlord's interest,[1] and of a receiver in insolvency or otherwise entitled to collect the rents from the estate.[2] It has also been held, that even an assignee of arrears of rent from the owner of the estate is a landholder within the meaning of the Act, for the purpose of pursuing his remedies under the Act.[3] But, some difficulty has arisen in cases where a grant is made to an inamdar of a portion of a village with both the warams, or of the melwaram only, but in the latter case, the kudivaram being already in the grantee. In *Brahmayya* v. *Achi Raju*,[4] a zamindar had made a post settlement or Darmila inam of a portion of a village with both the warams and the question arose, whether the grantee was a "landholder" for the purpose of the Act. It was held by a majority of the Full Bench following an earlier Full Bench in *Gadhadar Das* v. *Surya Narayana*,[5] that he was, because he owned part of an estate or at least he was one entitled to collect the rents of a

1. *Mallanna* v. *Ramaraju*, 1914 M.W.N. 343.
2. *Narayanasami* v. *Subramanyam*, 39 M. 683.
3. *Lakshmana* v. *Achi Reddi*, 44 M. 433 F.B. per Sadasiva Iyer J.
4. 45 M. 716 F.B. of 5 judges : 2 dissenting.
5. 44 M. 677.

portion of the estate within the meaning of Section 3 (5) of the Act. The case of *Marina. Virasami v. Venkatrayudu,*[1] was slightly different. There, a darmila inam consisted of the melwaram rights in certain lands, granted by the Zamindar in favour of a person who already owned the kudivaram rights in those lands and it was sought to be argued that such a grantee was also a landholder within the meaning of section 3 (5) of the Act. But their Lordships rejected that argument and held that he was not a "landholder" so as to attract the provisions of the Act in the matter of jurisdiction. A similar case arose in *Manikyamba* v. *Mallappa,*[2] in which the soundness of the decision was in a way questioned in the light of the 45 Madras Full Bench case above referred to. But, their Lordships were content to distinguish the two Full Bench decisions on the narrow ground, that while in one case it was a grant of both the warams, in the other it was a grant of only the melwaram though no doubt the grantee had the kudivaram even prior to the grant, and to simply follow the ruling in 39 M. L. J. 225, being a direct authority on the point. But here it must be noted, that the basis of these decisions being whether or not the grantee became the owner of part of an estate or at least was entitled to collect the rents of any portion of an estate by reason of the grant, it is rather difficult to reconcile them on principle.

Different kinds of lands in an estate.

The lands in an estate may be generally divided into

1. 39 M. L. J. 225 F. B.
2. 47 M. L. J. 393.

1. Ryoti lands and 2. Private lands; and Ryoti lands may further be sub-divided into (a) Ryoti land proper and (b) Old waste. The following table will illustrate the above classification.

Lands in an estate

- Ryoti lands.
  - Ryoti lands proper.
  - Old waste.
- Private lands.

Old waste.

Old waste means and includes any land in an estate, which, not being private land,

1. has at the time of letting by the landholder been owned and possessed by him or his predecessors in title for a continuous period of not less them ten years and has continuously remained uncultivated during the time; such period being either after, or partly before and partly after or completely before but within twenty years of the passing of the Act;
2. has at the time of letting by the landholder after the passing of the Act remained without any occupancy rights being held therein at any time within a continuous period of not less than ten years immediately prior to such letting;

and also includes ryoti land in respect of which before the passing of the Act the landholder has obtained a decree of a competent civil court establishing that the ryot has no occupancy right and so long as no right of occupancy has been acquired subsequent to the date of

such decree. In short, as Srinivasa Iyengar J points out in the case cited below. 'Old waste' means ryoti land admission to which is not to confer a right of occupancy. In the above definition, the words 'immediately prior to' and 'at the time of letting' are important. In the case of *Sankara Venkatratnam* v. *Varadaraja Appa Rao,*[1] lands which had been uncultivated for ten years immediately preceding 1900 were let in that year and were relet to the defendants after the expiry of the first lease and were in occupation of the defendants at the time of the passing of the Act; and it was held that such lands did not come within the definition of the old waste, because the period of ten years mentioned in 3 (7) clause 1 of the Act refers to the period immediately prior to the letting to the defendants and not to the period prior to the first letting.

Ryoti land proper.[2]

Ryoti land means cultivable land in an estate other than private land, but does not include

(*a*) tank beds;

(*b*) threshing floors, cattle stands, village-sites, and other lands situated in an estate which are set apart for the common use of the villagers;

(*c*) lands granted on service tenure either free of rent or on favourable rates of rent if granted before the passing of the Act, or free of rent if granted after that date, so long as the service tenure subsists.

In this definition, again, the word 'cultivable' is

1. 40 M. 529 F. B.
2. S. 3 (16).

important ; for, unless the land is of such a nature that it is ordinarily cultivable or cultivable at intervals of not unusual length, it is not ryoti land within the meaning of the definition, and the tenant of such land cannot be called a ryot.[1] So also land fit usually for pasturing cattle and not for raising agricultural crops will not be ryoti land.[2]

Ryot.[3]

Ryot means a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it.

Occupancy ryot.[4]

'Occupancy ryot' means a ryot having a permanent right of occupancy in his holding: and the term ' Kudivaram interest ' is generally used only in this sense.[5]

Rent.[6]

'Rent' means whatever is lawfully payable in money or in kind or in both, to a landholder for the use or occupation of the land in his estate for the purpose of agriculture and includes whatever is payable on account of the use and enjoyment of water supplied or taken for the cultivation of land, where the charge for such water has not been consolidated with the rent payable for the land.

And for the purposes of sections dealing with the recovery of rent under the Act, it includes also, any local

1. *Seshayya* v. *Raja of Pithapore*, 31 M. L. J. 214.
2. *Raja of Venkatagiri* v. *Ayyappa Reddi*, 38 M. 738.
3. S. 3 (15).
4. S. 3 (6).
5. *Venkata Sastri* v. *Seetha Ramudu*, 43 M. 166 P. C.
6. S. 3 (11).

cess or tax payable by the ryot *as such* in addition to the rent due in respect of the land, and sums payable by a ryot *as such* on account of pasturage fees or fishery rents.[1]

Private land.[2]

Private land means the domain or home-farm land of a landholder by whatever designation known such as Kambattam, Khas, Sir or Pannai.

Improvement.[3]

'Improvement' means with reference to a ryot's holding, any work which materially adds to or is beneficial to the holding and is suitable to and consistent with the character of such holding. In particular, it includes, the construction of tanks, and water courses, the construction of drainage works, reclamation, clearing or enclosing of lands, the erection of buildings in or about the holding for convenience thereof, the renewal and reconstruction of any of the foregoing works and the planting of fruit trees and fruit gardens. But it will not include, in the absence of a special contract, any work which prejudicially affects any other land of the landholder.

General Rights of Landholders and of Ryots.

1. *Occupancy right in ryoti land.*

The most important section of the Act, which, as we have already more than once said, for the first time

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1. The words as such are important. See *Raja of Venkatagiri* v. *Ayyappa Reddi* 38 M. 738.

2. S. 3 (10).

3. S. 3 (4).

specifically declares the substantive right of the tenant in the soil is section 6. The first part of it runs as follows:

Subject to the provisions of this Act, every ryot now in possession, or who shall hereafter be admitted to possession of ryoti land not being old waste, situated in the estate of such landholder, shall have a permanent right of occupancy in his holding; but nothing contained in this section shall affect any permanent right of occupancy that may have been acquired in land which was old waste before the commencement of this Act. Explanation: For the purpose of this sub-section the expression "every ryot now in possession" shall include every person who, having held land as a ryot continues in possession of such land at the commencement of this Act.

The effect of the above provision is to confer right of occupancy on all those ryots who were in *possession* of ryoti lands at the commencement of the Act as also on those who have been subsequently admitted to *possession* of ryoti lands by landholders. But what is the kind of possession contemplated by the section? Is it necessary that it should be with the consent of the landholder or at least not against the will of the landholder? In *Mallikarjuna* v. *Somayya*, a tenant of ryoti land not being old waste was in possession on the first of July 1908 when the Estates Land Act came into force, but he was holding over contrary to the terms of the Muchilika under which he was let into possession and the expressed wishes of the landholder. It was held by the Judicial committee, that even under such circumstances the tenant had obtained a permanent right of occupancy under Section 6 (1) explanation. Similarly in another case, a decree in ejectment having been passed against the tenant, he continued in possession of the lands pending appeal and in the meantime the Estates Land Act came into force. It was held by a Full Bench of the High Court, that the tenant did acquire occupancy right despite

the decree against him.[1] But in the case of *Venkatachala Naidu* v. *Ethirajammal*,[2] before the Act came into force, the holding of an occupancy tenant had been sold, for arrears of rent and purchased by the landholder himself; but the tenant, however, continued in possession till after the Estates Land Act came into force. Subsequently in a suit for possession against the tenant, he pleaded, that he had acquired permanent right in the land by virtue of Section 6 of the Act. Their Lordships Abdur Rahim and Oldfield JJ. negatived this plea of the tenant and gave a decree against him on the ground, that to acquire permanent right, the tenant at the commencement of the Act must at least be a tenant at will and must have continued in possession and that in the case before them he was merely a trespasser and therefore Section 6 would not avail him.

But suppose, a person takes a lease of certain ryoti lands from the landholder and lets them out to tenants for cultivation, without himself cultivating them. Who will acquire the occupancy right, is it the tenants who actually get into possession of the lands and cultivate them or is it the middleman who takes the lease and let, the lands for cultivation. This question actually arose in *Butchayya* v. *Appa Rao*,[3] and it was decided by the Privy Council that the tenants and not the middleman that could acquire the occupancy right, for the section contemplated actual but not constructive possession.

1. *G. Kanakayya* v. *Janardhana*, 36 M. 439 F. B. following earlier cases. This case has been approved by the P.C. in 42 M. 400 above cited.
2. 44 M. 220.
3. 44 M. 856 P.C.

The section further provides, that subject to certain exceptions, where land held by a ryot with a permanent right of occupancy is surrendered, or abandoned or comes into possession of the landholder and the landholder admits any person to the possession of the same within a period of ten years from the date of surrender abandonment or coming into possession, the person so admitted shall have a permanent right of occupancy therein;[1] and for the purpose of this sub-section, every landholder who receives rent from a person occupying a ryoti land other than old waste, will be deemed thereby to have admitted such person to possession, unless within two years of such receipt he files a suit for ejectment before the collector.[2] The exceptions contemplated above are contained in the rest of Section 6, Section 8 Sub-section 4 and the exception to Section 8:

(*a*) In cases where the interest of the ryot in the holding has passed to the landholder by transfer for valuable consideration before the passing of the Act otherwise than at a sale for arrears of revenue, or has passed to him by inheritance, whether before or after the passing of the Act, the landholder will be at liberty, for a period of twelve years from the passing of the Act or from the date of succession, whichever is later, to let the lands to tenants on any terms he pleases; and the tenants so admitted cannot by such admission alone, acquire occupancy right within the said period of twelve years.[3]

(*b*) Notwithstanding anything contained in Section 6

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1. Sub-section 2.
2. Explanation to Sub-section 2.
3. Section 8 (4).

or Section 8 of the Act, where, before or after the commencement of the Act, the Kudivaram interest in any land comprised in an estate falling within clause d of Sub-section 2 of Section 3,[1] has been or is acquired by the inamdar, by transfer succession or otherwise such land will cease to be part of the estate; so that no question of the acquisition of occupancy right under section 6 may arise with regard such land.[2]

(c) when a ryot is admitted to occupation of old waste, it shall be lawful for the land-holder to let it on such terms as he pleases; but such admission will not by itself confer upon the ryot so admitted any permanent right of occupancy.[3]

(d) Admission to waste land under a contract for pasturage of cattle, as also admission to land reserved bona fide by the land-holder for forest, under a contract for temporary cultivation will not by itself confer upon the person so admitted any permanent right of occupancy; nor shall such land become ryoti land by being so let out.[4]

(e) when a land-holder has reclaimed waste land by his own servants or hired labour, he may by contract in writing, prevent any person from acquiring a permanent right of occupancy in respect of the said land during a

1. The clause relates to grant of land revenue of a village to a person not owning the Kudivaram thereof.

2. Exception to Section 8. Recently a question arose whether 'abandonment' by the ryot is a mode of acquisition contemplated by the above clause. That was answered by a F.B. in the affirmative. *Jammala Yeadaka Subba* v. *Idupuganti Ramasami and others* 50 M.L.J. 535.

3. Section 6 (3).

4. Section 6 (4).

period of thirty years from the date of first cultivation after reclamation.[1]

(*f*) A person holding land as an ijaradar or farmer of the rent, shall not, while so doing, acquire otherwise than by inheritance or devise a right of occupancy in any land comprised in the ijara or farm.[2]

Lastly, we have the second explanation to section 6 which says " A person having a right of occupancy in land, does not lose it by subsequently becoming interested in land as land-holder, or by subsequently holding the land in ijara or farm." This explanation, it must be noted, is to some extent inconsistant with Section 8 sub-section (1) which lays down that where the rights of a land-holder and of the ryot merge in one person such person can hold it only as a land-holder and not as a ryot; and it has been pointed out in *Mankyamba* v. *Malluppa*, that where a conflict really arises, Section 8 must be read subject to section 6.[3]

We may now pass on to the provisions of section 8 which deal with the merger of occupancy right. Sub-section (1) of this section we have dealt with just now. Sub-section (2) lays down: when the occupancy right in any land is transferred to a person jointly interested in the land as land-holder, he can hold the land subject to the payment to his co-landholders their shares of the rent; and if such transferee lets the land to a third person such third person will be deemed to be an occupancy ryot in respect of the land. And Sub-section (3) is important and

1. Section 6 (5).
2. Section 6 (6).
3. 47 M.L.J. 393.

it says, that the merger of occupancy right under the previous sub-sections shall not have the effect of converting ryoti land into private land. The purpose of the above provisions is fairly clear, namely, that the character of a ryoti holding shall not change whatever may be the change in the position of the owner.[1]

Having considered section 6 with the exceptions thereto and also section 8, we are in a position to examine the maxim "*Once a ryoti land always a ryoti land*" which is said to express the principle of the enactment. The maxim simply means, that the extent of ryoti land in an estate may be augmented but not diminished; and the maxim is perfectly true but subject to two reservations. The first is that contained in exception (*b*) to the provisions of section 6 mentioned above; and the second is contained in the proviso to section 185 of the Act, which says that "all land which is proved to have been cultivated as private land by the land-holder himself, by his own servants or hired labour with his own or hired stock for twelve years immediately before the commencement of the Act shall be deemed to be the land-holder's private land."

But in the case of Zamindar of *Chellapali* v. *Somayya*,[2] it was argued that the exception to Section 8 and the proviso to Section 185 are not exhaustive of the methods by which a land once admitted to be 'ryoti' can be converted into 'private'; that Section 8 clause (3) merely contemplated a bare merger; and that therefore, when any such merger is followed by

1. The rest of the Section we have dealt under Section 6.
2. 39 M. 341.

a treatment of the land by the landholder as private, it will become private land under the first part of Section 185. Their Lordships Sir John Wallis and Seshagiri Iyer JJ. while disposing of the case on another point differed in their opinions as to the soundness of the above contention. Mr. Wallis J. upheld the contention but Mr. Seshagiri Iyer J. rejected it. The ground of latter's opinion is explained in the following pasage taken from his judgment :

"...... the question for determination is whether lands once enjoyed as *seri* (=ryoti) with tenant right can be converted by the Zamindar into his *Kambattam*. The question is not far from difficulty. The Sections that have a bearing upon this point are 3 (x), 6, 8, 181 and 185. Section 3 (x) defines " private land.".........

" *Primafacie* " a jarayati or seri (=ryoti) land cannot be converted into private land. This view is strengthened by the last explanation to Section 6 which lays down that an occupancy right in land is not lost by the tenant becoming the landholder. The character of the holding remains the same whatever may be the change in the position of the owner. Then we come to Section 8; clause (1) of that section deals with the merger of occupancy right in certain cases.........I cannot accede to the contention[1]......that clauses (1) and (3) (of that section) contemplate a bare merger without more, and that when

1. For, one of the contentions put forward before their Lordships in that case was, that the effect of Section 8 clause (3) was merely to say, that a bare merger will not by itself convert ryoti land into private land and that therefore it cannot be read as enacting that a ryoti land shall not be converted into private land even by being cultivated or let as such subsequent to the merger.

such a merger has been given effect to by treating the land as homefarm land it will not be obnoxious to the rule enunciated in Section 8.

....

"The only other section that has to be considered is Section 185. There can be no doubt.........that the proviso to that section is not in the nature of an exception............. Accepting this position, I think that the first part of Section 185 deals with the determination of the question, whether a particular field is ryoti or *Kambattam*, where nothing is known about its origin. If it was originally ryoti, the rule of evidence contained in the first part of the section can have no application, because that would practically abrogate the principle enunciated in Section 8 clauses (1) and (3). *The proviso to Section 185 is really an exception to Section 8 clause* (3). The object of the proviso is to enable the landlord to say, that although the land was seri, he has by his own servants, or by hired labour cultivated the lands for 12 years preceding the Act and that consequently it should be regarded as his homefarm land. An irrebuttable presumption should be drawn from such a conduct............ This conclusion carries out the scheme of the legislature which seems to be opposed to the augmentation of the private land of landholders, except in the special instance mentioned in the proviso to Section 185.[1]

The above view of Seshagiri Iyer J. has however been

1. at pages 348 to 350.

The case went up on appeal to the Privy Council. But there Lordships without saying anything on the legal question as to conversion disposed of the case on the facts. *Mallikarjuna* v. *Somayya*, 42 M. 400.

followed in preference to that of Wallis J. by two other learned judges of the High Court Abdur Rahim and Burn JJ. in *Mallikarjuna* v. *Subbiah.*[1] And apart from any judicial decision the view of Wallis J. in 34 M. 341 seems, with all respect to the learned judge, rather incorrect.

2. *Occupancy right heritable and transferable.*

(*a*) All rights of occupancy are heritable and also transferable by sale, gift or otherwise.

(*b*) If a ryot dies intestate in respect of a right of occupancy leaving no heirs except the crown, his right of occupancy will be extinguished, but the land in respect of which he had such right of occupancy will not cease to be a ryoti land.[2]

3. *Use of land and trees by the ryot.*

(*a*) A ryot may use the land in his holding in any manner which does not materially impair the value of the land or render it unfit for agricultural purposes.[3]

(*b*) Subject to custom and any contract to the contrary executed before the passing of the Act, every occupancy ryot will be entitled to use, enjoy and cut down all trees growing in his holding at the time of the passing of the Act and all trees that may subsequently grow naturally or may be planted by the ryot.[4]

4. *Right to make improvement.*

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1. 39 M.L.J. 277.
2. Section 10.
3. Section 11.
4. Section 12.

(*a*) Where a ryot has an occupancy right in his holding, neither the ryot nor the landholder will as such be *entitled to prevent the other from making an improvement* in respect of the holding except on the ground that he is willing to make it himself.[1]

(*b*) In case of competition, the ryot will have the preference; but, where the proposed improvement affects the holding of another ryot under the same land-holder, the land-holder will have preference.[2]

(*c*) Where an improvement is made at the sole expense of the ryot, and such improvement causes an increase in the production, the tenant cannot be made to pay an increased rent; and no usage or contract to the contrary will avail the landholder.[3]

(*d*) If a question arises between a ryot and the land-holder

i. as to the right to make an improvement, or

ii. as to whether a particular work is or will be an improvement.

the collector may on the application of either party decide the question.[4]

(*e*) A land-holder may apply to such Revenue Officer as the Local Government may appoint in this behalf to register any improvement made by him or which he has assisted the ryot in making; and any such application

1. Section 13 (1).
2. Ibid (2).
3. Ibid (3).
4. Section 15.

should be made within twelve months of the completion of the work.[1]

(*f*) Also a land-holder as well as a ryot may apply to the collector to record the evidence of any improvement in respect of a holding made after the passing of the Act; and the collector may after giving due notice to the parties record the same; any record so made will be evidence between the parties and their privies in all subsequent proceedings.[2]

(*g*) Notwithstanding any of the foregoing provisions, a ryot will be entitled to make temporary wells, water channels, embankments, enclosures and other works of petty alterations and repairs and nothing contained in clause (*f*) above will affect them.[3]

(*h*) Except as specially provided for in the Act, the relation between a ryot and his tenants or between a land-holder and his tenants of private land, and the rights of any other owners of land, are not regulated by the provisions of the Act.[4]

Pattas and Muchilikas

The following provisions will apply not only to occupancy ryots, but also, so far as may be, to ryots holding old waste under a landholder otherwise than under a lease in writing.[5]

Every ryot will be entitled to call upon his landholder to grant him a patta for any current revenue year

1. Section 16.
2. Section 17.
3. Section 18.
4. Section 19.
5. S. 50 (1).

and every landholder will be entitled to call upon his ryot to give him a muchilika in exchange for a patta.[1] The tender and demand of pattas or muchilikas should be made within twelve months of the commencement of the period to which the pattas or muchilikas relate.[2] These pattas and muchilikas may be exchanged for periods of more than one revenue year: but no landholder will be bound to tender and no ryot to accept a patta for more than one revenue year.[3]

A patta should contain (*a*) the names of parties, (*b*) the description and extent of the land, (*c*) the amount and nature (whether in money or in kind) of the rent payable, (*d*) any local tax, cess or fee payable with the rent, (*e*) the period or periods of payment of the rent, tax, cess or fee, (*f*) the date of the patta and (*g*) the special terms if any binding on the parties. The muchilika may, at the option of the landholder be a counterpart of the patta or a simple engagement to hold according to its terms. A patta and a muchilika must respectively be signed by the landholder and the ryot. The expression " Special terms " mentioned in clause (*g*) above will not include a stipulation in restraint of cultivation or of harvesting or for giving up possession by an occupancy tenant of his holding at any specified time; for any such stipulation will be null and void.[4]

The tender of a patta may be made to the ryot in the manner provided for the service of notice in section

1. S. 50 (2).
2. S. 52 (2).
3. S. 52 (1).
4. S. 51.

78 of the Act; or with the permission of the collector[1] the landholder may file it in the office of the collector or such other officer specified by the Local Government in this behalf; and the collector or other officer will thereupon cause the patta to be served on the ryot in the aforesaid manner.[2] If a landholder for *three months* after demand fails to grant a proper patta, the ryot may sue for such patta before the collector.[3] Similarly, if for one month after tender, a ryot fails to accept the patta and execute a muchilika, the landholder may sue before the collector to enforce acceptance of such patta.[4] These suits generally go by the name of patta suits; and in a patta suit the collector will have to determine two questions, namely, whether the party sued is bound to grant or accept a patta and (2) whether the terms of the patta are proper. If he finds that the party is not bound, the suit should at once be dismissed: but if he finds that the party is bound but that the terms are not proper, he should amend or alter the same and pass a decree in terms of the patta so amended or altered; and such decree will be of the same force and effect as if a patta and muchlika had been exchanged.[5]

The karnam of the village in which the holding is situated is bound to regularly sign and register pattas and muchlikas in respect of the holding.[6]

1. The permission must be given on an application made by the landholder.
2. S. 54.
3. S. 55.
4. S. 56.
5. S. 57.
6. S. 58.

Unless a valid patta has been tendered or continues in force, a landholder will not be entitled to proceed against the ryot for the recovery of the rent by distraint and sale of his movable property or by sale of his holding under Chapter VI of the Act. Where, however, a patta tendered is, in the opinion of the collector, partly correct and partly incorrect, it shall be enforceable to the extent to which it is found to be correct.[1]

We may here pauce and note the important changes made in the previous law relating to pattas and muchilikas by the Estates Land Act.

1. Under the Old law, pattas and muchilikas must be exchanged annually. Else, the landholder could not bring any suit for the recovery of rent. But under the Act, an exchange every year is not necessary provided a valid patta and muchilika are in force.

2. Under the old law, pattas and muchilikas could be exchanged only for the current *fasli*; but section 52 of the Act specifically lays down that by agreement of parties they could be exchanged for periods of more than one revenue year.

3. Under the old law, even by mutual agreement of parties, the exchange of patta and muchilika could not be dispensed with. But under this Act it can be.

4. Under the old law, a tender of patta was obligatory even after a decree for acceptance had been passed; but under the Act the decree of the collector is by itself, sufficient.

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1. Section 53.

5. Under the old law, rent could not be recovered at all, unless a valid patta had been tendered. But, under the Act, only the power of distraint and sale is taken away and the landholder will be entitled to bring a regular suit for rent.

6. Under the old law, if a patta was found to be partly correct and partly not so, the whole patta was bad and unenforceable. But, under the Act, such a patta may be enforced to the extent to which it is correct.

Rent

i. GENERAL

We have already seen, that rent may be either in money or in kind. Subject to the provisions of the Act, a landholder will be entitled to collect rent in respect of all ryoti land occupied by a ryot; and the rent so payable by the ryot and any interest which may be due in respect thereof will be a first charge on the holding and upon the produce of the holding.[1]

Payment and Deposit

Regarding the payment of rent, section 59 provides that it is payable by instalments according to the agreement or in the absence or any agreement according to the established usage.[2] An instalment of rent not paid on the due date, will become an *arrear of rent* on the following day.[3] Any such arrear will bear simple interest at the rate of one half per centum per mensem from the date on which it fell due until it is liquidated.[4]

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1. Sections 4 and 5.
2. S. 59.
3. S. 60.
4. S. 61.

On payment of each instalment, the ryot is entitled to obtain forthwith a written receipt for the amount paid by him signed by the landholder or his duly authorised agent. The receipt should specify (*a*) the names of the payer and the payee, (*b*) the name of the village in which the holding is situated, (*c*) the amount paid, (*d*) the description of the holding, on account of which the rent is paid, (*e*) the year and the instalment to which the payment has been credited, (*f*) whether the payment has been accepted in discharge of the whole or of part only and (*g*) the date on which the rent is paid.[1] If a receipt does not contain all these particulars, it may be presumed to be an acquittance in full of all arrears of rent up to the date on which the receipt was given.[2] If a landholder, without reasonable cause refuses to give a receipt to the ryot as specified above, the ryot will be entitled to recover from him by a suit before the collector compensation extending up to twice the amount or value of the rent paid.[3]

When a ryot makes a payment on account of rent, he may declare the year and the instalment to which he wishes the payment to be credited and the payment should be credited accordingly. If he does not make any such declaration, the payment may, at the option of the landholder, be credited on account of any arrear *not barred by limitation*.[4]

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1. S. 63.
2. Ibid.
3. S. 65.
4. S. 64. The words in italics must be noted.

The place at which the payment is to be made is generally the village office of the landholder. But, the landholder is at liberty to fix some other convenient place for payment, provided the place is within 5 miles of the village in which the holding is situated. Also, the ryots may, if they like, remit the rent by money-orders under rules prescribed by the Local Government. When, however, rent is payable in kind, it should be delivered at the landholder's granery in the village in which the holding is situated or at such other granery within ten miles of the village as may be specified by the landholder.[1]

Deposit

Instead of paying the rent to the landholder, a ryot may deposit the amount in the office of the collector in the following cases : (1) when the ryot tenders the money on account of the rent and the landholder refuses to receive or give a receipt for the same ; (2) when the rent is payable to two or more persons jointly and the ryot is unable to obtain a joint receipt of the said persons, and there is no person authorised to receive the same on their behalf ; and (3) when two or more persons severally claim the rent or the ryot entertains a bonafide doubt as to who is entitled to receive the rent. But, before making any such deposit, the ryot should present to the collector or such other officer appointed by the Local Government in this behalf, an application in writing for permitting him to do so. The application should specify the grounds on which the deposit is sought to be made, the item or items for which the payment is to be credited and the

1. S. 68.

name of the person or persons who are, or who claim to be entitled to the rent; and it must also be signed and verified as a plaint.[1] If it appears to the collector or other officer that the applicant is entitled to make a deposit, he should receive the rent and give a receipt for it. A receipt so given will operate as an acquittance for the amount deposited, in the same manner and to the same extent as if the amount had been received by the proper person.[2]

On receivihg the deposit, the collector or other officer should forthwith cause to be affixed in a conspicuous place in his office a notification of the receipt of such a deposit containing the necessary particulars.[1] If any person or persons appear and make a demand for the amount. the officer may, after satisfying himself, that he or they are the person or persons rightly entitled to the same, pay it over to him or them. If, however, nobody appears or there is a dispute as to who is the rightful claimant, he shall hold the amount in deposit till the person is ascertained or the dispute is settled.[3] But, if the money could not be paid out before the expiration of three years from the date of deposit, the amount may in, the absence of any order by a competent court of law to the contrary, be repaid to the depositor himself.[4]

Appraisement and Division of produce.

The amount of rent payable by a ryot may be either fixed or vary with the produce of the year.

1. S. 68.
2. S. 69.
3. S. 71.
4. Ibid: For further particulars see Ss. 70, 71 and 72.

Where the rent varies with the produce of the year, there are two modes in which the landlord's share is generally ascertained. They are (1) *appraisement* and (2) *division*. Appraisement is where an estimate is made when the crop is still standing and the landlord's share is ascertained either in money or in kind; division, on the other hand, is where the crop is harvested and the share is actually ascertained by division.

Where rent is taken by appraisement of the standing crop, the ryot will be entitled to the exclusive possession of the crop. Also where rent is taken by division of the produce, the ryot will be entitled to the same exclusive possession, but he cannot remove any portion of the produce from the threshing floor at such a time or in such a manner as to prevent a due division thereof in time. In either case, the ryot will be at liberty to cut and harvest the produce in due course of husbandry without any interference on the part of the landholder. But, before commencing to cut or gather the crop, the ryot should give reasonable intimation to the landholder or his authorised agent of his intention to do so. If, however, the ryot cuts and removes the crops without any intimation, with a view to prevent the due appraisement or division of the produce, the produce will be deemed to have been as full as the fullest crop of the same description in the neighbourhood on similar land for that harvest.[1]

1. S. 73. The presumption above referred to is a presumption of fact. the words used are '*may be deemed*' and not '*shall be deemed*.'

When for the purpose of appraisement or of division, the landholder or the ryot refuses to attend[1] at the proper time and place, or when there is a dispute as to the quantity or the value of the crops, an application may be made by either party to the collector for the appointment of an officer to make the appraisement etc.[2]

On receiving such an application, the collector may depute an officer for the purpose. Such officer shall, with the help of two assessors, one to be appointed by each party[3] make his award in the matter. And except where the assessors agree with the revenue officer, the parties may, within a week from the date of the award file their objections against the award before the collector. The collector, may, on hearing such objections, either confirm, modify or cancel the award.[4]

Recovery of Revenue

There are three modes in which a landholder can recover arrears of revenue due from a tenant under him. They are (1) by a suit before the collector: (2) by distraint and sale of the movable property of the defaulting ryot or the growing crops or the produce of the land: and (3) sale of the defaultor's holding in respect of which the arrear is due.[5]

Suit before the collector

At any time after an arrear of rent becomes due, the landholder may institute a suit before the collector for the

1. Either personally or by an agent.
2. S. 74.
3. If either party fails to attend or appoint an assessor, the officer may nominate one on his behalf.
4. For full details see S. 75.
5. Sections 77 and III.

recovery of the arrear and obtain a decree for the same.[1] And any decree so obtained may be executed either by the Revenue Court which passed it[2] or by a civil court to which it may be transferred for execution under Section 201. Where the decree is executed by the Revenue court, the provisions relating to the distraint and sale of the movables of the defaulter, etc., and the provisions relating to the sale of the defaulter's holding contained in Chapter VI of the Act, will, so far as may be, apply to the proceedings in execution.[3] Where, however, the decree is transferred to a civil court for the purpose of execution, the provisions of the Civil Procedure Code and not of the Estates Land Act will apply to the execution proceedings. The question, as to which set of provisions apply, becomes material in view of sections 5 and 125 of the Act. Section 5 lays down that the rent of a ryoti land together with any interest that may be due in respect thereof will be a first charge upon the holding: and Section 125 provides that when a holding or part of a holding is sold for arrears due in respect thereof the purchaser will take free of all encumbrances except (1) any right created by the ryot with the landholders permission signified in writing and (2) any encumbrance created before the passing of the Act. Now, suppose, a decree is passed by a Revenue Court and that decree is in form a simple money decree. Then, if the decree is executed by the Revenue Court itself, and the holding of the ryot in respect of which the arrear was due is sold, then, Section

1. Section 77.
2. Section 132.
3. Section 132.

125 will apply and despite the form of the decree, the purchaser will take the holding free of all encumbrances and subject only to the two exceptions mentioned above. But, suppose the decree is transferred to a Civil Court for execution. Then, if the sections of the Act were applicable to proceedings before the civil court as well, the position of the purchaser will be the same; if on the other hand, the provisions of the Civil Procedure Code alone were applicable, there being no provision in the Code corresponding to Section 125 of the Act, the purchaser cannot enforce his priority of claim and can take only subject to all encumbrances created whether before or after the Act. The difficulty above Suggested came up for solution in the case of *Venkata Lakshmamma* v. *Seethayya.*[1]

There, the plaintiff got a decree for rent against the second defendant, his tenant, in the Revenue Court. The decree was then transferred to a Civil Court under Section 201 of the Estates Land Act for execution; and the question arose whether the Civil Court could execute the decree under S. 132 of the Act as if it were a decree on a charge and give the purchaser a title free from encumbrances. It was held by their Lordships Sadasiva Iyer and Spencer JJ., that when a decree for rent is transferred to a Civil Court for execution, the provisions of the C. P. C. at once become applicable to the execution proceedings; the court executing the decree passed by another court, has no authority to go behind the decree and enforce a charge which is not declared in

1. 43 M. 786.

the decree to be executed; and that a Civil Court cannot assume powers which by law have béen definitely conferred on Revenue Courts only.[1]

So, then, the present position is this; if the purchaser should claim the holding free of all encumbrances, but subject only to the two exceptions mentioned above, either the decree must specifically declare the amount due under it to be a first charge upon the holding, or the decree must be executed by the Revenue Court itself.

Distraint and Sale of Movable Property[2]

Section 77 of the Act lays down, that in addition to the other two remedies provided for by the Act, the landholder or his agent may on his own responsibility distrain the movable property of the defaulting ryot subject to the exceptions mentioned therein and bring it to sale. But, any such distraint should be mode within twelve months of the date on which the arrear of rent becomes due. The details relating to the mode of distraint and to the extent thereof are contained in Sections 78 to 88 of the Act. The general rule is, that there must be a written demand on the part of the distrained before the distraint is actually made; and the distress should not be excessive: that is to say, the value of the property distrained should be as nearly as possible, equal to the amount of arrears due and the costs of the distress.

A third person claiming a right in any of the movable property under distraint, may make an application to the

1. at page 792.

2. In this part, the term 'movable property' unless otherwise specified shall include, growing crops, produce of land and trees in the defaulter's holding—the term is so made use of for the sake of brevity.

Collector or the sale officer appointed by the Collector, to deliver up or restore the property to him. The Collector will then hold an inquiry and pass such orders as he deems fit.[1] Similarly, where the distrainer believes, that defaulter has made a fraudulent conveyence of property to prevent distress or any person has forcibly or clandestinely taken away property once distrained, he may apply to the collector for restoration of the property or its value. The collector will then make an inquiry and if he finds the averments in the application true, order that the property be restored or that its value be paid to the distrainer.[2] Any person aggrieved by either of the orders mentioned above, may institute a suit before the Civil Court against the distrainer for compensation.[3]

If, even after the distraint is made, the tenant does not pay up the arrears, the distrainer may within fifteen days from the date of distraint apply to the sale officer for the sale of the property distrained. If no such application is made, the distraint will cease to be in force at the expiration of the fifteen days.[4] The further procedure relating to sale,[5] is dealt with by sections 93 to 102.

Where any material irregularity is committed by the distrainer in bringing the property to sale, the sale officer must report the same to the collector and postpone the sale pending the orders of the Collector.[6] The collector, may

1. Section 89.
2. Section 90.
3. Section 91.
4. Section 92.
5. the manner, relating to the place, time and etc.
6. Section 103.

thereupon, either order the sale to proceed or make such other order as may be necessary.[1]

The price of every lot must be paid at the time of sale or as soon thereafter as the sale officer directs; and in default of such payment, the property should be put up again for sale and any deficiency in price together with the costs of the resale recovered from the defaulter.[2] When the purchase money has been paid in full, the sale officer must deliver the property to the purchaser and issue a certificate signed by him in favour of the purchaser.[3] The sale proceeds should be spent in the following order; (a) Commission for sale to be remitted to the Tasildar at the rate of one anna per rupee; (b) the costs of distraint and the costs incurred for bringing the property to sale and (c) the arrears of rent due. The surplus, if any, must be paid over to the person whose property has been sold, along with a receipt for the arrears discharged[4].

No officer holding a sale and no person employed by or subordinate to him may whether directly or indirectly either bid for or acquire property sold at such sale.[5]

When an arrear of rent is realised from a tenant by proceedings in distraint, but the person so realising is not the immediate landlord of the tenant and the tenant is not the defaulter, the tenant will be entitled to deduct the amount so realised from any rent payable by him

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1. Section 104.
2. Section 102.
3. Section 105.
4. Section 106.
5. Section 107.

to his immediate landlord, and such landlord, if he is not himself the defaulter, may in turn deduct the same amount from any rent payable by him to his immediate landlord—and so on until the defaulter is reached. But, it is not obligatory on the tenant to make any such deduction and he will be entitled to sue in a civil court for compensation from the defaulter direct.[1]

In some cases, a conflict may arise between the right of a landholder distraining produce, over which he has a first charge under S. 35 of the Act and the right of a person claiming under an attachment by a civil court. In such a case, the right of the landholder will prevail; but the surplus proceeds of the sale, if any instead of being paid over to the defaulter, should be deposited in court from which the order of attachment issues.[2]

Sale of the defaulters holding.

Sections 111 to 133 of the Act deal with the third and the last mode of realising the arrear of rent, namely, by the sale of the ryot's holding in respect of which the arrear has become due. When an arrear is not paid within the revenue year in which it accrued due, it is open to the landholder to sell the holding or any part thereof.[3] But, before the holding is brought to sale, certain formalities must be gone through. First, the landholder must send a written notice to the defaulter through the collector stating the amount of arrears together with interest and costs and the period for which

1. Section 108.
2. Section 109.
3. Section 111.

and the holding in respect of which it is due.[1] The collector will then cause the notice to be served on the defaulter and forthwith intimate the fact of service to the landholder by post.[2]

Within thirty-days of the service of any such notice, the defaulter may institute a suit before the collector contesting the right of the landholder to sell the holding.[3] If no such suit has been instituted or such suit having been instituted is decided against the defaulter, the landholder may apply to the collector for sale. The period of limitation for an application under the above provision is forty-five days from the date of intimation of service by the collector or thirty-days from the diposal of the suit according as a suit has not or has been instituted by the defaulter.[4] On receiving such an application, the collector should appoint an officer to conduct the sale.

The provisions relating to the proclamation of sale, and the time, place and the manner of sale are embodied in Sections 117 to 123 and 126 and are similar to those governing the sale of movable property after distraint. The property brought to sale should not be excessive. The property must be sold by public auction in one or more lots as the selling officer may think advisable. The price of every lot must be paid at the time of sale or as soon thereafter as the selling officer directs, and in default of such payment, the property should be put up again for sale and any deficiency in price and the cost

1. Section 112.
2. Section 113.
3. Section 114.
4. Section 115.

of resale recovered from the defaulter.[1] All purchase-money received by the selling officer must forthwith be transmitted to the collector.[2] At any time within thirty-days from the date of sale, the defaulting ryot or any person having an interest in the property affected by sale, may apply to the collector to have the sale set aside on his depositing with that officer (*a*) for payment to the landholder, the amount specified in the proclamation together with subsequent costs, but less any amount, which, since the proclamation, have been received by the landholder, and (*b*) for payment to the purchaser, a sum equal to five percentum of the purchase money. The collector may thereupon pass an order setting aside the sale.[3]

Where the sale has not been so set aside and the purchaser has paid the full purchase money, the collector is bound to grant a certificate in favour of the purchaser, stating the property sold, the name of the purchaser and the date of sale etc., and place the latter in possession of the property. The certificated purchaser, will, as we have already seen, take the property free of all encumbrances except those created with the consent of the landlord and those created prior to the passing of the Act.[4]

The following is the rule regarding the appropriation of the sale proceeds : there should be first paid to the landholder the costs incurred by him in bringing the

1. Section 123.
2. Section 124.
3. Section 131.
4. Section 125.

property to sale: in the next place, the landholder should be paid the amount of arrears together with interest up to the date of payment; then, the landholder should be paid any rent which may have fallen due between the date of application or suit and the date of sale; and lastly, if any balance is left, it should be made over to the defaulter, but subject to any order of a civil court to the contrary. However, no payment should be made under the above provisions until after the expiry of thirty days from the date of sale, because, during that period, there is the possibility of the sale being set aside.[1]

Extension of application of the provisions of this chapter

The provisions relating to the Recovery of Revenue from a ryot by distraint and sale of movable property will apply so far as may be, to

(1) the recovery of rent by a landholder from a tenant of private land in the estate, provided pattahs and muchilikas have been exchanged between them; and

(2) the recovery of rent by a landowner under ryotwari settlement or in any way subject to the payment of land revenue direct to the Government or any other registered proprietor of land, from a tenant from whom he has taken a written agreement specifying the rent to be paid[2].

Enhancement of rent

The rent payable by a ryot cannot be enhanced except on any one or more of the grounds specified in the

1. Section 127.
2. Section 134.

Act; and in particular, where for any land in his holding, an occupancy ryot is paying rent according to the *waram*[1]. with or without an addition in money or otherwise in kind or on the estimated value of a portion of the crop, such rent will not be liable to enhancement. So that, only with regard to holdings which pay a money rent, there can be any enhancement. The reason of the last provision is, that where the rent forms a definite fraction of the produce or its equivalent, it automatically increases with the increase in the productivity of the soil and therefore needs no special provision.[2]

The grounds specified in the Act for the enhancement[3] of rent are;

1. that during the currency of the existing rent, there has been a rise in the average local prices of the staple food crops in the taluk or Zamindary Division;

2 that during the currency of the existing rent, the productive powers of the land held by the ryot have been increased by an improvement effected by, or at the expense of, the landholder;

3. that a work of irrigation or other improvement has been executed at the expense of the Government and the landholder has been lawfully required to pay in respect of the holding an additional revenue or rate to the government in consequence thereof;

4. that the productive powers of the land held by the ryot have been increased by fluvial action; and

1. The term *warm* means the established rate of the village for dividing the crop between the landholder and the ryot.
2. Sections 24 and 29.
3. Section 30.

5. that the landholder is entitled to enhance the rent under section 26 of the Act.

On any one or more of the above grounds, the landholder may institute a suit before the collector to enhance the rent. Let us now consider these grounds one by one in some detail.

Ground 1: where rent is sought to be enhanced on the first ground, a few conditions must be satisfied: They are (*a*) the rent must not have been permanently fixed; (*b*) any enhancement made should not exceed two annas in the rupee of the rent previously payable for the land; (*c*) within twenty years next preceding the institution of the suit, there must not have been any enhancement or commutation of rent or the dismissal of a suit for enhancement on the merits; and further, the enhancement should not be arbitrary, but based upon a comparison of the statistical prices of the crops. The collector should ordinarily compare the average prices published under the authority of the Local Government during the ten years immediately preceding the institution of the suit with those during the ten years preceding the last ten years; but if the collector thinks that it is not practicable to take the decennial periods, he may in his discretion substitute any shorter periods and the periods referred to must be exclusive of the famine years, that is to say, years notified by the Local Government to have been such. After such comparison is made, the collector may fix the enhancement such that, the enhanced rent may bear to the previous rent, the same proportion as the average prices during the last decennial period bear to the average prices during

the previous decennial period. But, in calculating this proportion, again, the average prices during the later period should be reduced by one half of their excess over the average prices during the earlier period. The following table will make the method of calculation clear.[1]

Average prices during the 10 years next preceding the suit.	The average prices during the 10 years preceding the last 10 years.	First—½ its excess over the second.	The ratio between the enhanced rent and the rent previous.
Rs. 21.	Rs. 15.	Rs. 21—6/2 = 21—3 = 18.	= 18 : 15 = 6 : 5

Ground 2.—The essence of this ground is, that something has been done by the landholder to increase the productivity of the holding and therefore it is fit that he is given a share in the increment. But, before the collector grants an enhancement on this ground, he must be satisfied either that the improvement has been registered in accordance with the terms of the Act or that it has been executed within fifteen years preceding the commencement of the Act. Again, in determining the amount of enhancement, the collector should have regard

(*a*) to the increase in the productive powers of the land caused or likely to be caused by the improvement ;

(*b*) to the cost of improvement ;

(*c*) to the cost of preparation and cultivation required for utilising the improvement and

(*d*) to the existing rent and the ability of the land to bear a higher rent.

Also, if the improvement fails or ceases to produce the estimated effect, the enhancement decreed under the above provisions may be revised by the collector, on an application from the landholder or his successor.[1]

Ground 3.—Where an enhancement is claimed on this ground, the rent may be enhanced by the sum or proportionate part of the sum which the landholder has lawfully to pay to the government on account of the improvement made by them.[2]

Ground 4.—The term '*fluvial action*' is generally applied to the deposit of alluvian, but for the purpose of the Act, it includes a change in the course of a river rendering irrigation from the river practicable, where it was not so previously.[3]

Where enhancement is claimed on this ground the collector should not take into account any increase which is merely temporary or casual and see that the increased rent is fair and equitable and that it does not exceed one half of the net produce of the land.[4]

Ground 5.—Section 26 lays down : where lands have been let out at a rate of rent lower than the lawful one, (*a*) for the purpose of reclaiming waste lands, (*b*) for the purpose of clearing jungles, (*c*) for the purpose of making any permanent improvement or for planting

1. Section 32.
2. Section 33.
3. Explanation to Section 30.
4. Section 34.

trees on the holding or in pursuance of a contract entered into prior to the commencement of. the Act and for a *valuable* consideration, such rent shall not be liable to enhancement during the period for which such lower rate is payable,[1] provided the ryot shall substantially fulfil the terms of the tenancy. Therefore, after the expiry of the period for which the lower rate has been fixed or on a failure of the tenant to substantially fulfil the terms of the tenancy, the landholder may claim the full rate. Also, except in cases coming under clauses (*a*), (*b*), (*c*) and (*d*) above, no rent below the normal rent fixed by a landholder will be binding upon his successor beyond the lifetime of the former, so that, after the landholder's death, his successor will be entitled to claim the full rent lawfully payable upon the holding.[2]

The expression *rent lawfully payable*, again, requires some explanation. It means rent payable upon land of similar description and with similar advantages in the neighbourhood. But it does not necessarily exclude a contract rate on which the occupancy is based[3].

Clause (*d*) mentioned above talks of "a contract for valuable consideration." What does that mean? Suppose a landholder agrees to collect from his tenants only half the amount of rent due for certain *faslis*. Can it be said that this contract is bad as being without consideration and that the landholder can therefore recover the full amount? No. The question actually arose in *Vedachala*

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1. By contract or custom as the case may be.
2. Section 26 and *Karuppa Goundan* v. *Narayana Chettiar*, (1918) M.W.N. 188.
3. Per Wallace J. in *Para Dekkan* v. *Ameeruddin Sahib*. 17 L.W. 169.

v. *Siva Perumal*,[1] and it was held that Section 26 of the Estates Land Act does not exclude the operation of the general law as to consideration embodied in Section 63 of the Contract Act and that therefore the landholder could not recover the full amount.[2]

Whatever may the ground on which the rent is enhanced and notwithstanding any of the provisions herein before contained, the collector should not in any case decree any enhancement which, under the circumstances, is unfair or inequitable or which would operate so as to raise the rent beyond the established waram of the village in which the holding is situated. Also, if the collector, while passing a decree on grounds 1, 2 and 4 above, considers, that the immediate enforcement of the decree to its full extent will be attended with hardship to the ryot, he may direct that the enhancement shall be gradual; that is to say, that the rent shall increase by degrees for any number of years *not exceeding five*, until the limit of enhancement decreed is reached.

Lastly, we may notice one or two rules of presumption laid down by the Act. Section 27 lays down, that when a question arises as to the amount of rent payable by a ryot or the conditions under which he holds in any revenue year, he shall be presumed, *until the contrary is shown*, to hold at the same rate and under the same conditions as in the last preceding revenue year. But the words in italics clearly indicates, that the presump-

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1. 25 I.C. 741.
2. Under Section 63 of the Contract Act no consideration is necessary to forego a portion of the rent payable.

tion laid down by the section is at best a rebuttable presumption. In *Muthia Chettiar* v. *Periyan Kone*,[1] it was proved that money payments had been made, but at varying rates for a number of years past: and it was contended, that on such proof being given, the court was bound to presume an implied contract to pay money rent in lieu of waram and that consequently the landholder should not be allowed to revert to the waram. But, this contention was negatived on the ground, that money payments were made at *varying rates* will be proof to the contrary within the meaning of section 27 and it was held that the landholder could revert to his waram notwithstanding the temporary lapses from the same. Section 28, on the other hand, deals with the presumption as to the fairness of rent and provides that, in all proceedings under the Act, the rent or rate of rent, for the time being lawfully payable by a ryot should be presumed to be fair and equitable until the contrary is proved. So far, we have been dealing with the enhancement of rent which is already prevailing. But, suppose a ryot is newly admitted to possession of a ryoti land. Can the landlord fix any rent which he chooses upon the land? This question is answered by section 25 of the Act. Every ryot so admitted to possession after the commencement of the Act will be bound to pay rent at a rate not exceeding the rate prevailing for similar lands in the neighbourhood; and in case such rate cannot be easily ascertained, at the rate to be fixed by the collector. However, the landholder will be entitled to receive any premium from the ryot at the time of letting him into

1. (1920) M.W.N. 115.

possession, as consideration for the landholder's favour: but, once the ryot comes into possession of the property, he will no more be liable to make any payment whatever by way of premium or otherwise except the lawful rent, nor will any holding of the ryot be subjected to any charge in respect of any premium or consideration. So, then, if the landholder should exercise his valuable right of securing a premium from the ryot, he must do it before the latter is actually let into possession.

Reduction of Rent

Where, for any land in his holding, an occupancy ryot pays a money rent, he may institute a suit before the collector for the reduction of the rent on any one or more of the following grounds, and on no others:[1]

(*a*) that the soil of the holding has, without the fault of the ryot, become permanently deteriorated by a deposit of sand or by other specific cause, sudden or gradual;

(*b*) that in the case of irrigated land, there has been a permanent failure of supply from the irrigation work on which it is dependent; and

(*c*) that during the currency of the existing rent there has been a fall not due to a temporary cause in the average local prices of staple food crops in the taluk or zamindary division.

On such suit, the collector may direct such reduction of rent as he thinks fair and equitable. Where rent is

1. Section 38.

sought to be reduced on ground (c) above, he shall have regard to the considerations mentioned in clauses (a) (b) (c) and (d) of section 31[1] and where rent is sought to be reduced on ground (b) he must see that the failure is permanent and not merely temporary : for instance, it is not obligatory on the part of a landholder to make any remission on the ground of *savi* unless some custom or contract to the contrary is proved to exist.[2]

In this connection, we may note two important points of difference between *enhancement* and *reduction* of rent.

1. In the case of an additional demand of revenue by the Government from the landholder, on the ground of new improvements effected by the former, a contribution by way of enhancement of rent has to be made by the tenant; but no corresponding concession is given to the tenant for reduction of rent in case of a reduction of the revenue payable by the landholder to the Government.

2. The enhancement of rent on the ground of rise in prices is subject to certain provisos, which exclude cases of fixed rent and limit the measure of enhancement. Such provisos are significantly absent in the clause dealing with reduction on ground of fall in prices.[3]

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1. These clauses have been dealt with in connection with the enhancement of rent on ground 1. Note—that regard to reduction, the last clause (e) alone has been omitted. That clause provides for deducting from the average prices of the last decennial period, half its excess over those of the next preceding decennial period, before striking the ratio.

2. *Krishna Rajanugaru* v. *Rangachariar*, 3 L.W. 300.

3. See Section 30 i (a) and (b) and Section 31 (e)

Commutation of Rent

Where for any land in his holding, an occupancy ryot does not pay a fixed money rent but pays the rent in kind or on the estimated value of a portion of the crop or at rates varying with the crop, the ryot or the landholder may sue before the collector to have such rent commuted to a fixed money rent. On such a suit, the collector will decide whether commutation should be allowed and if so, what should be the rent payable and when should the commutation take effect; and in deciding these things, he will have regard to the following considerations.

1. The average value of the rent actually accrued due to the landholder during the preceding ten none famine years.[1]

2. the money rent payable by occupancy ryots for land of a similar description and with similar advantages in the same village or neighbouring villages; and

3. improvements effected by the landholder or the ryot in respect of the holding and the rules laid down in section 32[2]

Though these are the only considerations specifically mentioned by section 40 of the Act, it has been very properly held by judicial decision, that the collector need not restrict himself to these alone, but may take into account others which may have a material bearing on the question of commutation.[3] It has also been

1. If evidence is not available for such a long period as ten years, the Collector may substitute such shorter period as he thinks just.

2. The provisions of this section we have dealt with under enhancement on ground 2.

3. *Venkanna and others* v. *Receiver Madur and Nidavalore Estates*, 1 L.W. 245.

held, that none of these considerations are entitled to more weight than others.[1] Further, it must be remembered, that what is sought to be secured by these considerations is not a strict arithmetical calculation of averages and the application of market prices, but a reasonable and proper money equivalent of the rent which is being paid. For instance, in a suit for commutation, a collector is bound to take into consideration the fact, that the rent actually collected during the decennial period before suit, was in excess of what was legally due to the landlord.[2]

What do the words *preceding ten years* used in clause mean? Do they mean 'ten years prior to the year in which the suit is instituted' or do they mean 'ten years prior to the year in which the collector determines the amount of the commuted rent? It has been held, that they mean only the latter and not the former.[3]

Then as regards the nature of the right conferred by the above provisions on a landholder or a ryot, it may be stated, that either of them may apply to the collector to order commutation, but it is entirely at the discretion of that officer to do so or not; or in other words, neither the ryot nor the landholder can claim commutation as of right, though on justifiable cause, it may be granted by the collector; for instance, where it is shown, that the payment in kind is productive of no hardship, but that it will be more convenient for either party to have a fixed money rent, commutation will not be allowed. The reason of the rule is stated by the Board of Revenue in *Karuppiyya*

1. *Ibid.*
2. *Sivgnupandya Thevar v. Zamindar of Urkad*, 41 M. 109.
3. *Surya Narayana v. Rajagopal Rao*, 35 M.L.J. 547.

Thevan v. *Adaikkalam Chetty*[1] thus: "The Act is intended to protect the interest alike of the tenant and of the landlord; and unless either of them suffers, because of the payment of rent in kind, interference by way of commutation will not be justified. The party who asks commutation of rent under Section 40 must prove he is entitled to it."

The case of *Kanthimathi* v. *Arumugam*[2] gives us an idea as to what will be a good ground for commutation. There, it was proved, that under the system then prevelant, disputes existed and were likely to arise *between the landholder and the tenant* in the valuation of the crops; and it was decided by the Board, that there was a clear necessity for commutation of rent. Similarly, in another case, a suit was brought for commutation, on the ground, that disputes arose *between particular ryots* regarding the division of produces and the commutation was allowed.

Lastly; the question of commutation being a matter for the collector, a civil court can neither alter or set aside an order of the collector on the ground he is wrong in the exercise of his discretion. But, where facts show that a condition necessary to give jurisdiction to a revenue court as for instance the tenant being an occupancy tenant, is absent or that there has been a material irregularity in the proceedings of the collector, as for instance a refusal to regard the provisions of clauses (1) (2) and (3), viciating such proceedings, then a civil court can interfere.[3]

1. 41 I.C. 511.
2. B. P. No. 4874 Mis. dated 8-7-15.
3. *Sami Gudu* v. *Srinivasalu Reddi*, 11 L.W. 620.

Once a commutation has been allowed, there can be no suit for enhancement or reduction within twenty years, except on special grounds and the special grounds are the alteration of the area of the holding and those mentioned in Section 30 clauses ii and iii and section 38 sub-section i clauses (*a*) and (*b*).[1]

Alteration of rent with area.

A ryot will be liable to pay additional rent for all lands proved to be in excess of the area for which rent has been previously paid by him. But, if it is shown, that the excess is due to an addition of land, which having previously belonged to the holding was lost by diluvion or otherwise and that on such loss, no reduction was made in the rent, then, the landholder will not be entitled to any additional rent. Similarly, a ryot will be entitled to a reduction in the rent, in respect of any deficiency which may be proved to exist in the area of his holding as compared with the area for which rent has been previously paid by him. But, here again, no such reduction will be allowed, if it is shown, that the deficiency is due to a loss of land which was once added to the area of the holding by allusion or otherwise and that on such addition, no additional rent was, however, levied. And, where a dispute arises between a landholder and a tenant as regards the enhancement or reduction of rent, under the foregoing provisions, an application may be made to the collector by either party for determining the question ; and no enhancement or reduction can take place before the order of the

1. Section 30 clauses ii and iii=grounds 2 and 3. under enhancement; and clauses (*a*) and (*b*) of sub-section i of Section 38=grounds (*a*) and (*b*) under reduction.

collector is passed.[1] But, this last rule, it must be remembered, will apply only where rent is sought to be enhanced or reduced on the ground of increase or decrease in the area without there being any arrangement between the parties : but for instance, if it is shown, that the enhancement is founded on a lease, which has recognised the right of the landholder to an enhanced rent by reason of excess area discovered on a survey, the order of the collector will be unnecessary and a suit for enhanced rent will lie irrespective of any such order.[2]

On any application being made to the collector for the purpose of determining a question of enhancement or reduction, the following is the procedure to be adopted by him. He should first issue notices to the parties concerned ; then he must cause such measurements to be made as he thinks fit of the lands in the holding and take the evidence adduced by either side. And in the light of the evidence so adduced, he must decide whether or not a case has been made out either for reduction or for enhancement. The various considerations which should weigh with the collector in this matter, are embodied in Section 44 of the Act, but they are not dealt with here as being matters of detail.

With a view to enable a landholder to find out any excess in area in a tenant's holding, it is provided by section 43 of the Act, that a landholder, may, by himself or by any person authorised by him in his behalf, enter upon and measure the land comprised in the holding.

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1. Section 44.
See also *Srinivasa* v. *Abdur Rahim*, 1917 M. W. N. 584.
2. *Sivaganga Zamindar* v. *Chidambaram Chetty*, 38 M. 523.

Trespassers on ryoti lands

There are three sections in the Act dealing with trespassers on ryoti lands. They are sections 45, 163 and 213 (*d*). Of these, the first deals with the rent payable by such a person, the second with the right of the landholder to eject him; and the third with the penalty for disobedience of an order of ejectment made under section 163. We may here appropriately study section 45 alone reserving a consideration of the others to the topics dealing with ejectment and penalties.

A person who, without the consent of the landholder, occupies for agricultural purposes, ryoti land which he has not acquired by inheritance or legal transfer, will be liable to pay for each revenue year or portion thereof, the rent fixed for that land, or if no rent has been fixed, such sum as the Collector may on application determine to be fair and equitable. In addition, he may also be liable to pay such sum as the Collector may award as damages for the unauthorised occupation, provided, the amount of damages does not exceed the rent fixed or determined for the land. And in recovering the rent as well as the damages, the landholder will have against the tenant, all the remedies provided by this Act for the recovery of rent.

Illegal Cesses

It is one of the essential principles of the Act, that landholders should not *exact* from their ryots under any name or pretence, anything in addition to the rent *lawfully payable*; and consequently, it has been enacted,

that all stipulations and reservations for such additional payment will be void.[1] Where, however, contrary to the provisions of the Act, any sum of money or any portion of the produce of land has been *exacted* by the landholder, in excess of *the rent lawfully payable*, the ryot may sue before the Collector and recover in addition to the amount or value which has been so *exacted*, such sum, not exceeding one hundred rupees or double the amount or value, whichever is greater, as the Collector thinks fit. But, here, some difficulty arises in interpreting the terms *exacted* and *the rent lawfully payable*. We have already seen, that the term 'rent' includes among other things, any local tax, cess, fee or sum payable by a ryot in addition to the rent, according to law or usage or under any enactment for the time being in force. It is, therefore, clear, that where a payment is made under any statute for the time being in force, or in pursuance of a local usage or custom, there can be no illegality,[2] and it was held in one case that a fee called *Kanganam fee*[3] was legally leviable with regard to the holding in question, in accordance with the local usage and the tenant had therefore no right to complain against the levy of such a fee.[4] Then, coming to the term *exacted*, it means 'extorted' or 'forcibly taken,' so that where a tenant comes and pays to the landholder a cess without there being any compulsion on the part of the

1. Section 143.
2. Sections 144 and 3 (11).
3. Protection charges.
4. *Sundaram Iyer* v. *Thitheeappa Mudaliar*, 40 I.C. 159. There are also other similar cases.

latter, the tenant will not be entitled to recover the amount under the Act.[1]

Repair of Irrigation Works

Generally speaking, a landholder is bound to keep up in repair all works of irrigation in his estate, which are necessary for a proper cultivation of his ryot's holdings. But, at the same time, it is incumbent on the ryots to do for themselves, such minor repairs as they are bound to do under the Madras Compulsory Labour Act[2], and to refrain from doing any act, which will either destroy or endanger the works of irrigation. Also, there are cases in which the responsibility for maintaining the irrigation works rests not with the landholder, but with the Government or certain inamdars.

If any landholder refuses or neglects to execute the necessary repairs with regard to any work which he is bound to maintain, an application may be made to the District Collector for an order directing the landholder to execute those repairs. But, any such application can be made only by a person or persons who either pay not less than one fourth of the rent of the *Ayakat* under the work or own one fourth of the extent of the lands comprising the *Ayakat*. The application should state in sufficient detail, the nature of the repairs deemed necessary, the extent of the land irrigated by the work and the rent derivable from it.[3]

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1. per *Sadasiva Iyer* and *Tyabji* JJ. in *Venkata Narasimha Rao* v. *Ramamma*, 30 I. C. 166.
2. I of 1858.
3. Section 135.

The District Collector, should, on receiving an application under the above provisions, issue notice to the landholder in accordance with the provisions of the Act, and call upon the latter to appear before him and show cause why an order should not be made in accordance with the prayer in the application.[1] On the day fixed for the hearing, the Collector or such other officer, not below the rank of a deputy Tasildar, as he may depute in this behalf, should hear the parties as well as any ryots of land affected by the work in question and present at such hearing. He may, in addition, take any other evidence which he deems fit. If on the evidence so taken, the District Collector is satisfied, 1. that the rent payable by the landholder in respect of the land irrigated by the work is higher than it would be if the land were not so irrigated, 2. that the work is in such a state of disrepair as materially to prejudice the irrigation of lands dependant upon it and 3. that the state of disrepair is not due to wrongful acts of the ryots or their omission to do the minor repairs referred to in paragraph one, then, he may pass an order directing the landholder to restore the work to efficiency within a particular period. By such an order, he may also declare, that if within the period fixed, the landholder fails or neglects to carry out the repairs, the applicants, with or without any other ryots, may apply to him for an order authorising them to carry out the repairs themselves. If, on the other hand, the landholder shows, that the obligation to maintain the work is imposed not upon him but upon somebody else, for example, a person holding a *Desabandam inam*

1. *Ibid.*

granted prior to the permanent settlement and confirmed but not enfranchised by the British Government, then, the application will be dismissed, leaving the applicants to seek the remedy against the proper person.[1]

We have already noted, that in some cases, the responsibility to maintain a work may lie with the government and not with the landholder. Some of them are cases in which the work serves partly an estate and partly Government land and are provided for by sub-section (1) of Section 138 of the Act. Under that sub-section, the repairs should invariably be executed by the District Collector, after due notice, to the landholder and the landholder's share of the costs recovered from him as an arrear of revenue. The rest, however, are cases, in which the work belongs to the Government and the landholder is entitled under an engagement with the former to the supply of water free of charge ;[2] and these cases are provided for by sub-section (2) of the same section. Here, unlike in the case of an order passed under the previous paragraph, the landholder, if he is dissatisfied with the order of the Collector, may institute a suit in the Civil Court to set aside the same, on any one of the following grounds, namely, (*a*) that he is under no obligation to repair the irrigation work concerned, and (*b*) the portion of the charge which he is liable to pay has been wrongly calculated.[3]

Having so far considered the persons on whom the liability to repair rests, we may come back to the order

1. Section 138.
2. See also Irrigation Cess Act.
3. Section 138 (3).

passed by a Collector under section 137 of the Act (c), on an application by the ryots against the landholder, and consider, how it may be executed. We have seen that, the order may declare, that if the landholder fails to execute the repairs within a given time, the applicants may be permitted to do the same themselves. On any such permission being given, the ryots may carry out the repairs and apply to the District Collector for an order for the recovery of the cost. The District Collector may then, after due notice to the landholder and after inquiry into the objections, if any, raised by him, pass an order specifying the amount to be paid and calling upon the landholder to pay it within a specified time. If, however, the landholder fails to comply with the order, the District Collector should pass an order for recovering the amount from the ryots holding lands under the irrigation work in question and for paying over of the same when recovered, to the executants of the repairs. And every ryot from whom any sum has been recovered under the above order, will be entitled to deduct from the rent payable by him to the landholder, a sum equal to the difference between the irrigated and the unirrigated rates over his holding, till the amount paid by him together with interest thereon at six per cent. per annum is recouped. If the unirrigated rate is not known or is disputed, the Collector may determine the same.

Lastly, we may refer to Section 142 of the Act which deals with the jurisdiction of a Civil Court. That section provides, that except otherwise provided for in the previous paragraphs, no proceedings under this head, are cognisable by a Civil Court but that any order made

by the District Collector, other than an order under section 138[1], may, subject to the provisions of Schedule B to the Act, be revised by the Board of Revenue on appeal; and the order of the Board of Revenue will be final.

Sub-Division and Transfer.

Of the Landholder's Estate.

We saw in the last chapter, the effect of a transfer of the whole or part of an estate by a landholder, from the standpoint of his relationship with the Government. Now, let us consider the effect of the same from the standpoint of the ryots under the landholder. Whenever such a transfer takes place, the landholder and the transferree are bound to give notice of it to the ryots by publication in the District Gazette or in such other manner as the Local Government may direct. The result, however, of their failure or neglect to give such a notice will not be to invalidate the transfer, but to render the position of the transferree somewhat risky. That is to say, if supposing, a ryot not knowing that a transfer has taken place, pays the rent for a period subsequent to the transfer, to the landholder, the transferree cannot compel the ryot to pay the rent over again to him. Similarly, all proceedings taken against the landholder by any ryot in ignorance of the transfer, will be as valid and binding upon the transferree, as if they had been taken against the transferree himself. The above provisions apply *mutatis mutandis* to the case of a division of an estate by the co-sharers.[2]

1. Referred to in the penultimate paragraph.
2. Section 148.

Of the Ryot's holding.

A ryot is at liberty to transfer the whole or any part of his holding to another in any manner he pleases. He is also entitled to divide the holding between himself and his co-sharers. And *a fortiori*, a ryot's holding may also be sold in execution of a decree or order of a Civil Court or for arrears of revenue. When any such transfer, or division is brought to the notice of the landholder, he is bound, subject to certain conditions, to recognise the same and enter into separate engagements with the transferrees or co-shareress as the case may be from the revenue year succeeding. The conditions referred to are (1) a landholder is not bound to recognise the sub-division of a revenue field or part thereof unless such sub-division is not less than five acres, if the field be classed as 'unirrigated' or not less than one acre, if it be classed as 'irrigated'; and (2) the distribution of the rent between the divisions should be made by the landholder or with his consent.[1]

From what we have said above, two questions arise for consideration. The first is, what is the kind of notice which should be given to the landholder? Suppose the landholder gets a casual report of a transfer by a ryot. Will it be sufficient notice? This question is answered by Section 146 of the Act. That section provides, that any transfer or sub-division should be communicated to the landholder either by a notice in writing given by the

1. In case the distribution by the land holder be unfair or delayed for an unreasonable time, the Collector shall on application by the ryot make a fair apportionment which shall be binding upon all parties concerned. See Sections 146 and 145.

transferor and the transferee or the co-sharers or by the production of the order or decree of court or by the production of the certificate of sale. The second is, what is the effect of a failure to give notice of the transfer or subdivision? The effect of such a failure is, as in the case of a transfer by the landholder, to make the position of the transferor as well as the transferree in the one case and of the co-sharers in the other somewhat unsafe. For, so long as the transfer or sub-division is not brought to his notice, the only person with whom the landholder can and is entitled to deal is the original ryot: and consequently, the landholder will, in case of an arrear of rent, be entitled to proceed against the properties of such original ryot, though the transfer has already taken place and the default is made by the transferree or other co-sharers. Similarly, again, all acts and proceedings commenced or had against the original ryot in regard to arrears of rent, will as against the transferree or co-sharers, be valid and effectual, as if they had been commenced or had against themselves. Subject to these disqualifications, however, the transfer or sub-division will remain perfectly good, for it is not the scope of section 146 of the Act which deals with this matter, either to affect or determine the substantive right of parties. In other words, the section simply lays down, that the landlord is entitled to deal with the existing pattadar till the transfer or sub-division is notified to him and does not profess either to negative existing titles or to create new ones.[1]

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1. *Sri Mahant* v. *Sasangapani Chetty*, 1923 M.W.N. 193.

Record of Rights and Settlement of Rents

Before proceeding to consider the details of, what are called, '*Record of Rights*' and the '*Settlement of Rents*' it is necessary, that we understand the meaning of these two expressions. 'Record of Rights' is a record or writing containing the results of a detailed survey of the lands comprising an estate and the inquiries made with regard to them with a view to ascertain the existing rights of parties. This record may be prepared at the instance either of a landholder, or of ryots or of the Local Government, but always by an officer appointed by the Local Government in this behalf. The object of such a record is to secure generally the ryots or the landholders in the enjoyment as such of their legal rights and to settle or avert any serious disputes that may arise between them. "Settlement of Rent", again, is nothing more than the ascertainment in detail of the rent payable by every ryot in an estate or part thereof, for the purpose of preventing, as far as may be, the rent disputes which may arise between a landholder and his ryots. Such a settlement may be made by an officer of Government at the instance of a landholder or of the ryots, but only, if the Local Government feels that the settlement would be beneficial to either of them. But, there can be no 'settlement of rent' without there being a 'Record of Rights' and whenever a settlement is made, it is incorporated into the Record of Rights and forms part of the latter.[1] Let us now consider these two in some detail.

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1. Sections 164 and 168.

Record of Rights

The Local Government may make an order directing that a survey be made and a Record of Rights prepared by a revenue officer in respect of any estate or part thereof in the following cases. (1) Where an application is made by the landholder or landholders, if there are more than one, and of the ryots,[1] (2) Where the Local Government considers, that the preparation of a record is necessary for securing the rights of the landholders and of the ryots and for preventing disputes arising between them; (3) Where an estate is managed by the Government or is under the superintendence of the Court of Wards. The first step in the preparation of the Record, will be a survey of the lands under the Madras Survey and Boundaries Act 1897; the next step will be, if the Government so directs, to inquire into the rights and obligations of the ryots and of the landholder in respect of the several holdings. When both these steps are completed, a preliminary record will be made of the results of the inquiries and of the survey by the Revenue Officer in charge and published in such manner and for such period as the Government may direct. During the period of publication, all objections to any entries or omissions in the Record will be heard and determined by the Revenue Officer himself, in accordance with the proceedure prescribed by the Government. These things being over,

1. But here, an application by a sole landholder or by the entire body of all the landholders as the case may be, as well as by the entire body of ryots will always lie. But, where it is made by some only of the many landholders or of ryots, the applicants must either be landholders owning at least half of the estate or ryots forming at least one fourth of the total number of ryots in the estate.

the Record will be published in the final form in such suitable manner as the Government deems fit.[1]

In a case, where the Government has directed an inquiry into the rights of the landholders and of the ryots, the Record will contain some or all of the following particulars.[2]

(1) the name of the ryots and of the landholder or landholders under whom the former hold;

(2) the nature of the tenancy, whether occupancy or non-occupancy;

(3) the situation, extent and description of the holdings. Description includes, the mention of the class to which the land belongs; 'irrigated' or unirrigated.

(4) details regarding the rent payable by each ryot, the amount, the conditions under which it is payable—whether fixed and permanent or gradually increasing—whether no rent at all—whether capable of enhancement and so on.

and (5) the irrigation right of parties. And the entries regarding these as well as other particulars contained in the Record of Rights will be strong evidence of those particulars, in all suits and proceedings before courts.[3]

Settlement of Rents

At any time within two months of the final publication of the Record under the previous paragraphs, the landholder or the ryots (holding not less than one-fourth

1. Section 164.
2. Section 165.
3. Section 167 (3).

of the extent of the holdings in the estate) may apply to the Government for the settlement of the rents payable by the ryots; and on such application, the Government may direct the Revenue Officer who prepared the Record of Rights to effect the settlement also. The rules which should guide the officer in the matter of settling rents are contained in section 168 of the Act. They are (1) the officer should presume till the contrary is shown that the existing rate of rent is fair and equitable; (2) the officer may propose to the parties such rent as he considers fair and equitable; and the rent so proposed if accepted by the parties, may be recorded as fair and equitable; and (3) where the parties agree among themselves as regards a particular rent, the officer is not bound to accept the same as fair and equitable, unless he is satisfied that it is so. When the settlement is completed, a preliminary record of the same should be published and the parties affected given an opportunity to raise objections to the entries contained in it. After the objections, if any, have been disposed of, the settlement should be confirmed by some authority appointed by the Government in this behalf. Then, the record should be incorporated into the Record of Rights and republished in accordance with the directions of the Government.

From any order made by the Revenue Officer in regard to objections raised against the entries in the preliminary record, an appeal will lie to such revenue officer as may be appointed by the Government, within two months of the passing of the order. Also, the Board of Revenue may, at any time, within two years from its final publication or republication, direct the revision of the

whole any part of the Record of Rights.[1] But independently of these, any party aggrieved by an entry in the Settlement Record or by an omission to settle a rent, may institute a suit before the Civil Court on any one or all of the following grounds but on no others : (1) that the relation of the landholder and ryot does not exist; (2) that the land is not liable to the payment of rent; or is liable to pay rent; (3) that the entries regarding the rate, the conditions of enhancement and the mode in which rents have been fixed, are wrong; (4) that special and favourable conditions of holding have been either wrongly included or excluded; (5) that lands have been wrongly classed as irrigated or unirrigated; and (6) that the revenue officer has wrongly fixed the date from which the settlement should come into force. And the period of limitation for such a suit will be 6 months from the date of final Publication. All the decisions of the Civil Courts as well as those of the appellate Revenue authorities should be incorporated into the Record of rights.

When any rent is settled under the foregoing provisions, there can be no enhancement or reduction of rent within the next twenty years except on the grounds specified in clauses ii and iii of Section 30, clauses (a) and (b) of sub-section 1 of Section 38, or on the ground of alteration in the area.[2]

Except as provided for by the foregoing provisions, a Civil Court will have no jurisdiction to go into a

1. No such direction should be against an order of Civil Court.

2. These clauses deal with cases of improvements effected at the cost of the landholder and cases of deterioration of lands on account of deposits of sand, permanent failure of water supply, etc. —Section 177.

question regarding, the direction, preparation or publication of the Record of Rights.[1]

The expenses incurred by the Government in the matter of preparing the Record of Rights and the Settlement of rents, must be borne by the landholder and the ryots in such proportion as the Government may fix as reasonable.[2]

Relinquishment and Ejectment

Relinquishment

Every tenant other than a tenant of old-waste bound by any written agreement for a fixed term may relinquish at his pleasure the whole or part of his holding subject however to the following conditions : (1) the relinquishment must be with effect from the end of a revenue year ; (2) the relinquishment must be with regard to not less than a revenue field ; (3) the portion relinquished must be accessible ; (4) the apportionment of rent on the part retained by the ryot, shall, subject to revision by the collector, be fixed by the landholder ; and (5) unless notice is given to the landholder by the ryot of his intention to relinquish, before the 1st of April, the latter will be liable for the rent payable on the part relinquished for the revenue year next following.[3] The portion retained will be treated as a new holding and fresh pattas and muchilikas will be exchanged from the revenue year next following the one in which the relinquishment takes place.[4]

1. Section 179.
2. Section 180.
3. Where the landholder refuses to receive notice, the procedure to be followed is laid down in Section 150.
4. Section 149.

Ejectment

The only ground on which an occupancy tenant can be ejected is that the ryot has materially impaired the value of the holding for agricultural purposes and rendered it substantially unfit for such purposes. But, in deciding whether such a ground exists, the Court must have reference to the circumstances of each individual case such as the area of the entire holding, the portion withdrawn from agriculture, and the effect of such withdrawal on the value of the holding as a whole.[1] The recent case of *Sree Raja Vasireddi* v. *Kameswara Somayajulu*,[2] best illustrates what will constitute such an act as will render the land substantially unfit for agricultural purposes. There the defendants 1 to 4 sold practically the whole of their holding to defendants 5 to 10 for building purposes. But, by the time the suit for ejectment was brought by the plaintiff, only a very small portion of the holding had been actually built upon. It was held, that though only a small portion had been actually built upon, yet by selling practically the whole of the land for building purposes, and by precluding themselves by a contract from raising any objection thereto, the defendants 1 to 4 had materially impaired the value of the holding and rendered it substantially unfit for agricultural purposes and that the plaintiff was accordingly entitled to a decree for ejectment. If, however, in that very case, the defendants had not sold practically the whole of the land for building purposes, but had themselves built upon a small portion of the

1. *Raman Chetty* v. *Arunachalam*, 39 M. 673 following the observations in *Hari Mohan Misser* v. *Surendra Narayin Singh*, 34 C. 718 P.C.
2. 50 M.L.J. 97.

land, it seems the decision would have been otherwise. For, the conversion of say a quarter of an acre out of fifteen or sixteen acres of land into building site will not amount to rendering the holding substantially unfit for agricultural purposes.[1] But, even in such a case it seems that though an order for ejectment may not be granted, yet compensation may be given for the damage caused, provided of course, the damage is not very trivial and is ascertainable.[2]

If there is a valid ground, as explained above, the landholder may sue before the Collector for any one of the following reliefs :

1. for ejectment, or for compensation or for both ;
2. for an *injunction* ; and
3. for a repair of the damage or waste caused, with or without compensation.

Where ejectment is prayed for, the Collector is not bound to grant it simply because the ground is made out, for a relief by way of ejectment is discretionary merely and the Collector in a proper case, will refuse to grant that relief. For instance, if he is satisfied that the damage done admits of being repaired or that pecuniary compensation would afford adequate relief, the decree will be to the following effect, namely, that within one month or such further time as the Collector may grant, the damage shall be repaired or the compensation (fixed by

1. See *Raman Chetty* v. *Arunachalam Chetty*, 39 M. 673.

2. *Sankaralingam* v. *Subramanyam*, 29 M.L.J. 54 and also 50 M.L.J. 97 supra.

the Collector) shall be paid; failing such repair or compensation, the tenant shall be ejected.[1]

Where the ryot has, before the date of his ejectment, sown or planted crops in any land comprised in his holding, he shall be entitled at the option of the landholder either to his share of the emblements or to a reasonable compensation for the labour and capital expended by him in preparing the land and sowing, planting and tending the crops, together with the interest thereon. If the landholder elects to give the ryot his share of the emblements, the latter is entitled to retain possession of the land and to use it for the purpose of tending and gathering the crops; and for such possession of the land, the ryot in turn is bound to pay rent to the landholder at the rate at which he has been holding.[2] Also, if the ryot has, before the date of his ejectment, prepared the land for sowing, but has not actually sown, he will be entitled to compensation to the extent to which he has expended labour and capital together with interest thereon. If, however, the ryot prepares the land or sows it after the commencement of the proceedings, and such act is not in accordance with any local usage, he will not be entitled to any compensation in respect thereof.[3]

Non-occupancy ryots

Who they are

Non-occupancy ryots are those who have no permanent right of occupancy in their holdings. In this broad sense, so far as an estate is concerned, the ryots of old

1. Section 152.
2. Sections 155 and 156.
3. Proviso to Section 155.

waste, and the ryots of the landholder's private lands are all non-occupancy ryots. But sometimes, the expression is used to denote the tenants of old waste alone, as contradistinguished from the tenants of the landholder's private lands. Whether this narrower construction is justified or not, we shall here use the expression as applying to tenants of old waste only, so as to avoid any confusion that may otherwise arise.

Acquisition of occupancy right

The rights of a non-occupancy ryot are very limited. He may, in the due course of husbandry, reclaim, clear, enclose, level, terrace or remove silt from his holding, as also construct, maintain and repair a well for the irrigation of his holding. But, he is not entitled to make any other improvement, unless the landholder gives his consent thereto.[1] The one most valuable right which, however, he possesses, is to require the landholder to confer occupancy right on him, on his satisfying the conditions prescribed in section 46. That section provides, that in all cases except those provided for in sub-sections 4 and 5 of section 6 and in sub-section 4 of section 8, the ryot may on tendering to the landholder a premium equal to 2½ times the annual rent on the holding, together with the cost of preparing any instrument necessary for the purpose, require the latter to confer occupancy right on him with respect to the holding.[2]

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1. Section 14.

2. The exceptions mentioned in sections 6 (4) and (5) and 8 (4) are the following:

   a. Where ryots have been admitted to old waste under a contract for the pasturage of cattle or they have been admitted to lands

This right of the ryot will not be affected by the fact of there being a subsisting lease or any contract to the contrary.[1] In case of dispute regarding the reasonableness of the amount of annual rent, and therefore of the amount of premium, the parties may apply to the collector to settle the same.[2]

If a landholder to whom an application and a tender has been made, fails for a period of one month, to confer the right, the ryot may deposit the sum aforesaid in the collector's office and apply to the collector to confer on him, the right. The collector, shall thereupon give notice to the landholder and after hearing him, if he appears, and making such inquiry as he thinks necessary, may execute an instrument for conferring a permanent right of occupancy on the ryot. The following case,[3] decided by the Board of Revenue is somewhat interesting. The question there was "Does a non-occupancy ryot cease to be such for purposes of section 46, if his lease expires after he has applied to the collector to fix the rent for

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bonafide reserved for forest, under a contract for temporary cultivation.

b. Where a landholder has reclaimed waste land by his own servants or hired labour, and the ryots are precluded by a contract in writing from claiming a right of occupancy for a period of 30 years from the date of the first cultivation after reclamation.

c. Where the interest of the ryots in a ryoti land has passed to the landholder, by inheritance or for valuable consideration as mentioned in section 6 and the tenant admitted thereafter is further prevented by a special agreement, from claiming any right of occupancy for a period of 12 years from the date of the merger of interests.

3. Sections 46 (1) and 188.

4. Section 46 (2).

5. B. P. No. 4. Mis. dated 2?–12–17.

purposes of application and tender referred to in section 46 (1) but before he actually makes the formal application for conferring the right of occupancy under that sub-section." It was held that he did not and was therefore entitled to claim the right of occupancy.

Enhancement of rent

The rent payable by a ryot of old waste may be enhanced in the following cases and in no other.[1]

1. When the rent is not fixed by an agreement in writing.

2. Where the tenancy is from year to year and

3. Where the tenant holds over after the expiry of the term of the lease.

If the enhancement is unreasonable, the *Collector*, may on application by the ryot determine what is reasonable.[2]

Ejectment

The following are the grounds on which a non-occupancy ryot may be ejected from his holding by a suit before the collector :

1. that he has used the land in a manner which renders it unfit for the purposes of the tenancy ;

2. that a decree for arrears of rent in respect of the holding passed against him or any person whose legal representative he is, has remained unsatisfied at the expiry of the revenue year, following the one in which the decree was passed ;

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1. Section 47.
2. Section 49 (2).

3. that he has refused to agree to pay a fair and equitable rent under section 49 ;

4. that without the permission of the landholder, the ryot has mined, quarried or excavated gravel or clay for profit, within his holding ; and

5. that the ryot having been admitted to the occupation of the land under a registered lease for a term exceeding 5 years, the lease has expired.

Compensation

When a non-occupancy tenant is ejected from his holding, he is ordinarily entitled to compensation for improvements made by him on such holding; that is, he can say that he will not quit the holding till he is paid his compensation. And as a rule, the revenue court, while making a decree or order for ejectment, will determine the amount of compensation payable to the ryot and stay the execution until the landholder deposits the amount less any arrears of rent or costs, that have been ascertained by the court to be payable to him by the ryot. The procedure to be adopted in fixing the compensation is laid down is section 154 clauses 3 and 4.

Also, as in the case of an occupancy ryot, a non-occupancy ryot who is sought to be ejected will, at the option of the landholder, be entitled, either for his share of the emblements or for a further compensation for the labour and capital expended by him in raising the crops together with the interest thereon ; and when he has merely prepared the ground for sowing, but has not actually sown, he will be entitled to the estimated value

of the labour and capital expended by him so far, with interest up to the date of ejectment. The considerations which apply to the case of an occupancy ryot in regard to these matters apply to the case of a non-occupancy ryot also.[1]

Private and Communal Lands

Private Lands of the Landholder

We have already seen, that private land means the domain or home farm land of a landholder, by whatever designation known, such as Kambattam, Khas, Sir or Pannai. To such a land, the provisions of the Act have only a very limited application. For, section 19 provides, that except as otherwise provided for in the Act the relations between a ryot and his tenants, or *between a landholder and the tenants of his private land* as well as the rights of any other owners of land, are not regulated by the provisions of the Act. Therefore, for instance, a tenant of private land cannot say that on the payment of a premium equal to $2\frac{1}{2}$ times the annual rent, he is entitled to the occupancy right in the holding ; nor can he say that a dispute between him and the landholder regarding his title or interest in the holding is cognisable by a Revenue Court and not by a Civil Court.

The provisions of the Act which have been specially made applicable to private lands are those contained in Sections 134, 158 to 162 and 181 to 185.

Section 134 lays down, that the provisions contained chapter VI for the recovery of rent from a ryot by distraint and sale of movable property shall apply so far as may

1. Section 155.

be to the recovery of rent by a landholder from a tenant of private land in the estate, provided pattas and muchilikkas have been exchanged between them.

Sections 158 to 162 deal with the eviction of a tenant of private land summarily by means of a warrent. Section 158 provides, that when any tenant of private land in an estate shall be in arrear at the end of any revenue year and there is no sufficient distress upon the premises to satisfy the arrear, the landholder or his authorised agent may apply to the Collector for a warrant authorising him to enter and take possession of the premises. The further details relating to this matter are contained in sections 159 and 160. The warrant when granted will be entrusted to a police officer to be executed. At any time within three months of the delivery of possession to the landholder, the tenant who is aggrieved may file a suit in the Civil Court to set aside the proceedings and restore him to possession.[1] But none of the above provisions will apply to any land in which the tenant has a salable interest, for if it were so, the landholder may as well bring such interest to sale and get his arrear satisfied.[2]

Sections 181 to 185 constitute chapter XII which is devoted exclusively to landholders private land. The important provisions of the chapter are the following :—

1. A landholder is always at liberty to convert his private land into ryoti land.

2. The Local Government may make an order directing a revenue officer to make a survey of the estate

1. S. 161 2. S. 162.

and record the landholder's private lands—This may be done at the instance either of the landholder or of the tenant.

3. When in any suit or proceeding, a dispute arises as to whether any land in an estate is private land or ryoti land, it shall be presumed not to be private land till the contrary is shown; and in deciding whether the land is ryoti land or private land, regard should be had to three things: (*a*) any local custom, (*b*) whether the land was let out as private land prior to the 1st of July 1898 and (*c*) any other evidence that may be useful.

4. Notwithstanding anything contained in rule 3 above, if it is shown, that for 12 years immediately preceding the passing of the Act, the land had been cultivated as private land, either by the landholder himself or by his hired labour and with his own or hired stock, then, the land should be presumed to be private land.

The last two rules from the body and the proviso to section 185 with which we had to deal a little elaborately in connection with the scope of the maxim "once a ryoti land always a ryoti land."

Communal lands

Threshing floors, cattle stands, village sites and other lands situated in an estate and set apart for the common use of the villagers are termed the communal lands. These lands cannot be assigned or used for any other purpose except with the written order of the Collector and in accordance with the rules framed by

the Government.[1] Where, however, any land has been so set apart *by the landholder* subsequent to the permanent settlement, and the Collector thinks, it is no longer required for any communal purposes, it will revert to the landholder. Also, the restrictive provision above mentioned, will not in any way affect the rights of a landholder over any tank bed in his estate, that is to say, where the tank bed is cultivable when dry, it cannot be said that the landholder is not entitled to cultivate the same without the sanction of the Collector.[2]

Lastly, any person occupying any of the communal lands for any purpose other than that for which it is set apart, or contrary to rules framed by the Government, may at any time within 30 years from the commencement of such occupation, be summarily evicted by the Collector in the manner provided by the Land Encroachment Act III of 1905: and any crop, building, etc, that may be found upon the land shall also be utilised for such communal purposes as the District Collector may adjudge.[3]

Jurisdiction and Procedure.

Section 189 of the Act provides, that all suits and applications referred to in parts A and B of the Schedule to the Act, are exclusively triable by a revenue court and that no civil court in its original jurisdiction shall take cognisance of any of them. The object of the provision is to enable the landholders and ryots to settle their disputes in the revenue courts, without being obliged to

1. Section 20.
2. *Ibid* : explanation.
3. Section 21.

engage themselves in costly and long drawn litigations in the Civil Courts. But, it must be clearly understood, that the exclusion of the Civil Courts' jurisdiction is subject to two limitations: 1. The jurisdiction of the Civil Courts is excluded only to the extent to which jurisdiction is conferred on the Revenue Courts, so that there can be no suit or application cognisable neither by the Civil Courts nor by the revenue courts[1]; 2. the exclusion applies only to Civil Courts in their *original* jurisdiction, so that the appellate and the revisional powers of the Civil Courts are not entirely taken away.

If we just examine the nature of the suits and applications referred to in the Schedule, we may notice that two conditions are *generally* necessary to bring a case exclusively within the jurisdiction of a revenue court. In the first place, the relationship between the parties should be that of a land-holder and a ryot; and in the second place the subject matter of the suit or application must relate to lands situated in an estate.[2]

Recently there was an interesting case in which the point for decision was, where an *ex-landholder* wants to sue a tenant for arrears of rent which accrued due to

1. 38 M. 738.

2. The expression *generally* is used, because there may be cases in which neither the one nor the other of the conditions is satisfied and yet they are triable only by a revenue court; for instance, where a third person having an interest in the properties destrained wants to apply under S. 89 of the Act for the restoration of the properties, neither of the two conditions above referred to, are satisfied; yet such an application is cognisable only by a revenue court. Similarly, with regard to suits under Sections 102 and 123 of the Act to recover deficiencies in prices on a resale of goods or holdings from the defaulting purchasers.

him when he was admittedly a landholder, what is the proper forum in which the suit has to be brought—whether it is the revenue court or the Civil court.[1] There, subsequent to the date on which the rent fell into arrears, but prior to the date on which the suit was filed, the landholder's interest in the estate was sold away in execution of a decree against him. To recover the arrears of rent, he first filed a suit in the Civil court and then in the revenue court. Both the courts in turn refused to try the case each stating that the other alone had jurisdiction to entertain the suit. So, the matter came up to the High court in revision and the two learned judges who heard it first, referred it to a full bench. The full bench consisting of their Lordships Sir John Wallis, C.J. and Oldfield and Sadasiva Iyer, JJ. held, that the fact that the person ceased to be a landholder at the date of the suit cannot deprive the revenue court of its jurisdiction to try the suit and that therefore the order of the Collector was wrong and must be set aside. In delivering the judgment the Chief Justice observes at pages 324 and 325 as follows: "This cause of action when it arose was one in which the revenue court was empowered to try and the Civil Court was prohibited from trying.........The undoubted effect of of section 189 of the Act is to confer on the Revenue Court exclusive jurisdiction to try suits for rent accruing due to a landholder from a ryot on his estate and to prohibit the Civil courts from entertaining them. The Revenue Court having thus become seized with exclusive jurisdiction over this cause of action, when it arose, I can

1. *Lakshmamma Garu* v. *Achi Reddi*, 40 M.L.J. 319 F.B.=44 M. 433.

find no sufficient reason for holding, that the Revenue Court became divested of this exclusive jurisdiction by reason of the transfer of the ownership after the cause of action arose" Also on the question, whether for the purpose of that suit, the person was or was not a landholder within the meaning of section 3 of the Act, it was held by the full bench that he was.[1]

To take a few examples, a suit for ejectment of a tenant of a ryoti land,[2] a claim for arrears of rent from such a tenant,[3] and a suit for ordering a sale of the defaulter's holding, when such defaulter is the tenant of ryoti land are exclusively triable by a revenue court and a civil court cannot interfere in the exercise of its original jurisdiction.[4] On the other hand, a suit to eject a tenant of old waste, let into possession on a contract for pasturage of cattle,[5] a suit for a declaration that a rent sale is void on account of the sale application being made after 45 days under section 115 of the Act,[6] a suit for a declaration that a patta tendered is bad,[7] or that a patta tendered by a previous landholder is not binding on the successor,[8] and a suit for the recovery of the money paid by a ryot under protest to save his property from sale from the landholder,[9] are all suits which a civil court has jurisdiction to try.

1. *Lakshmamma Garu v. Achireddi*, 40 M.L.J. 319.
2. *Ardajeri Ram Reddi v. Karvi Siraga*, (1913) M.W.N. 971.
3. *Subbanna v. Gopalakrishna Achariar*, 34 I.C. 354.
4. *Ramanathan Chetty v. Ramasami Chetty*, 39 M. 60.
5. *Rajah of Venkata Giri v. Aiyyappa Reddi*, 38 M. 738.
6. *Chidambaram Pillai v. Muthamma*, 1 L.W. 414.
7. (1911) 2 M.W.N. 207.
8. (1911) 2 M.W.N. 339.
9. (1911) 1 M.W.N. 391.

The decrees and orders passed under the provisions of the Act are appealable according to the provisions of parts A and B of the schedule to the Act. In the case of an application under section 15 regarding improvements, or in the case of a suit under section 40 for commutation of rent, a second appeal will also lie to the Board of Revenue. The period of limitation for an appeal is 30 days or 60 days from the date of the final order or decree complained of, according as the appeal is to the District Collector or the District Judge, on the one hand or to the Board Revenue on the other.

Then, as regards revision, we have two Sections in the Act. Section 192 declares, that the provisions of the Civil Procedure Code are applicable to proceedings under the Act subject to the exceptions mentioned therein ; and there is nothing in the Section to exclude the operation of Section 115 of the Civil Procedure Code. The result is, that the High Court has ample powers of revision over the proceedings of the revenue Courts as well as over those of the Civil Courts. It is further provided by section 205, that the Board of Revenue as well as the District Collector may call for, examine and set aside the proceedings of any subordinate revenue Court, provided, there is no appeal from such proceedings and provided also the grounds mentioned in that section are satisfied. The grounds mentioned there, are exactly the same as those on which the High Court will interfere in revision under section 115 of the Civil Procedure Code. In some earlier cases, it was contended, that in as much as the Board of Revenue and the District Collector have been specially empowered to exercise revisional jurisdiction, it

must be taken to be the intention of the legislature to do away with the jurisdiction of the High Court in regard to the same matter. But, it is now well settled by a series of decisions, that as the Act stands at present, the High Court has powers of revision, by virtue of section 192 of the Act read with section 115 of the Civil Procedure Code, and the fact that a similar and concurrent power is also exercisable by the Board of Revenue or the District Collector under section 205 of the Act is immaterial.[1]

But, it has at the same time been laid down, that though the High Court has ample powers of revision, yet it will not exercise them so as to come in conflict with a decision or the Board of Revenue in regard to the same matter, unless, it be for the purpose of setting right any obvious miscarriage of justice. In the recent case of *the Maharaja or Jeypore* v. *Sobha Sundar*,[2] petition for revising an order passed by a Revenue Divisional Officer was put in to the Board of Revenue and it was disallowed by them on the ground, that the order of the Revenue Divisional officer was proper. Some two years afterwards, another Revision petition was put in to the High Court for revising the same order of the Revenue Divisional officer. His Lordship held relying on an earlier decision of a bench in 47 M. 250 that, though, the High Court has ample powers to revise such on order, even though the Board of Revenue has refused to do so previously, yet, in the circumstances of the case, there was nothing so

1. *Paramaswami* v. *Alamelu*, 42 M. 76; *Ramaswami* v. *Kali*, 42 M. 310; and *The Maharaja or Jeypore* v. *Sobha Sundar*, 49 M.L.J. 540.

2. 49 M.L.J. 540.

3. *Appanna* v. *Latchayya*, 47 M. 250.

grossly unjust in the order of the revenue Court as will justify his intereference and therefore dismissed the petition.

The decision of a revenue court or of an appellate or revisional authority in any suit or proceeding under the Act on a matter *falling exclusively within the jurisdiction of the revenue court* will operate as *res-judicata* with regard to subsequent proceedings on the same matter whether in revenue courts or in civil courts. But, as the words in italics show, before the proceedings of a revenue court can operate as *res-judicata* on a particular matter, it must be shown, that such matter was not merely directly and substantially in issue in the prior proceedings, but it was exclusively triable by a revenue court. So, in *Sri Rajah Sobhanadi Appa Rao* v. *Venkatrazu*,[1] it was held that the decision of a revenue court in a prior proceeding on the question of occupancy right of a tenant, which arose incidentally, could not be *res-judicata* in a subsequent proceeding before a Civil Court, because, the question of occupancy right which incidentally arose in the prior proceeding was not exclusively triable by a revenue court.

Further details regarding procedure are contained in sections 192 to 209, of the Act. Special periods of limitation are provided for by sections 210 and 211.

PART II

INAMS

HISTORY

In the days of Hindu Kings.

The Arabic term *inam* corresponds to the Sanscrit term *manyam* and signifies primarily a grant and secondarily a thing granted ; and in the subject of land tenures, it is almost invariably used in its secondary rather than in its primary sense. It is a matter of common knowledge in our country, that the ancient Hindu Kings vied with each other in the matter of making grants in favour of religious and charitable institutions, of individuals learned in Vedas and of men otherwise distinguished for their skill and learning, and deemed it a mark of honour and of greatness to have made such grants on extensive scales. Indeed, it may be remembered, that according to Manu the ancient and Divine Jurist of our land, the gift of lands is the best of gifts, especially, when it is made for the spread of religion and learning or the relief of poverty, and the measure of a king's glory is not so much the extent of his conquests, as his acts of charity which by relieving the poor, encouraging learning and spreading the religion, would make the society happy and content. If we just look at some of the ancient *Sila Sasanams* or deeds of grant, very often engraved on copper and other metallic plates, executed by the ancient kings, we would be impressed with the importance which they attached to such grants and the whole hearted manner in which they made them. The following is an

extract from a grant made by one of the ancient Pallava Kings in favour of a person called Kula Sarma.[1]

The worshipful King is pre-eminent. From the rich and victorious Kanchipura, Sri Nanda Varma, the Dharma Maharaja of the Pallavas who are the ancestral family of Bharadvaj, **who by piety towards God, has secured every kind of prosperity for himself and of happiness for his subjects : who is always ready to perform his vows to offer sacrifices, righteously undertaken ; .... ; who constantly meditates on the mercy of God ;** .... the son of .... ; the grandson of........ ; the great grandson of........ ; **have** given four pieces of forest land in the village of Kanchi-Vayil in the District of Adayar to be enjoyed in the same manner as heretofore, to Kula Sarma a brahmin residing in Kanchi Vayil belonging to the ancestral family of......together with all immunities, except the temple plough land, **in accordance with the usual custom of gifts made to Brahmins, for the prolongation of our lifetime, and the increase of our power, glory and riches.** Knowing this, yield ye up the four pieces of forest land in the tax free village of Kanchi Vayil, together with tax immunities. **He who shall disregard our royal grant is fit for a sinborn body**. Besides there are verses to the effect uttered by Brahma. **The gift of lands is the best of gifts ; there has neither been any greater in times past, nor shall there be hereafter. Neither has there ever been a greater sin than the resumption of that gift, nor shall they be hereafter. Whoever shall resume land, whether given by himself or others, partakes of the sin of the slayer of a hundred thousand cows.**

This grant was delivered on the 5th day of the bright half of the month of Vaisaka, in the first year of our advancing victorious reign.

Similarly another grant begins :

" I bow my head to Sadasiva, who wears the matted heir ; who sits immovably in silent meditation on the summit of Mount Meru for the good of the three worlds with Uma reverently by his side ; who has the sun and the moon for his two eyes ; while the rising moon sheds its rich glory upon him etc."

The above extracts not only illustrate the solemnity

1. The full translation is given in Salem District Manual. Appendix p. 349.

2. Ibid p. 359.

with which the ancient grants were made, but also this further point, namely, that those grants consisted generally both of the land as well as the land revenue payable thereon, and not merely the former. The reason of the last mentioned practice is not far to seek. In ancient days, when lands were in abundance and only labour was wanting, so that any one may get lands for cultivation for the mere asking of it, the land by itself was not worth much and could not therefore be a valuable gift. On the other hand, the grantees, most of whom were not actual cultivators of the soil, priced only the land revenue and wanted to have it if possible. This was probably also the reason why there were more cases of grant of the land revenue by itself, than those of land without the land revenue. But in course of time, when the value of the land, apart from the land revenue, began to rise, and the distinction between the cultivating and the non-cultivating classes became less marked and successive governments felt that these inams involved a large sacrifice of the state-revenue, small rents, not amounting to the full value of the assessment, otherwise payable, came to be levied in many cases on the lands once granted absolutely tax-free.

Thus, to resume, the grant of inams whether in favour of individuals or of institutions is not of any recent origin but is traceable to very remote antiquity. In the days of Hindu kings there was hardly a village of any importance which had not its two temples one Vaishnava and the other Siva, with their endowments whether great or small; nor was there a town or town-stead without its

1. See 4 B.H.C.R. at p. 7.

chatram or choultry where travellers could hault and have their food in all seasons of the year. Besides these, there were also *patasalas* or schools in every convenient centre, where the youths of the country could go and have their lessons as well as their boarding, free. These *chatrams and patasalas*, had large and benevolent endowments, in most cases, from the ruling princes, and in others, from pious and wealthy people of the country. Then, as regards individual or personal grants, the Brahmins, who form probably the most unjustly hated class at the present day, were the most loved and respected by the Hindu kings and had large number of inams granted to them, mainly for subsistence; for, the Brahmins, most of them, then, more than now, were very poor and depended largely on the bounties of rulers as well of the wealthy classes. However, it will be wrong to suppose, that Brahmins alone had these grants, because, undoubtedly, there were instances in which people other than Brahmins were the object of benovelent gifts. In many cases, apart from temples, the *pujaris* or *pattars* themselves who were entrusted with the doing of pujas, had grants made in their favour; similarly, there were people charged with certain charitable duties such as the maintenance of a water shed or the raising up of a flower garden for the use of some temple or deity and had on that score, some lands granted to them in inam.

Besides the grants so far mentioned, there were also grants made to people for the support of works of irrigation, or for the carrying out of police duties in the country or as remuneration for village offices and artizanships. These last mentioned grants, however, were made

more from the stand point of public utility than from the stand point of charity, and should therefore be classed separate.

There was also a third class of grants namely, grants made in favour of officers of state for services rendered or to be rendered and grants made in favour of relatives and dependents of the rulers by way of subsistence allowance. This class, again, as the previous one, had nothing to do with charity, unless every thing done for the benefit of another or of the public is charity, and was designed to encourage public service in the one case and to provide means of subsistence to relatives and dependants, in the other.

During the Mohamaden rule

The Mohamedan invasions, as we already saw, did not, to any large extent, alter the existing institutions; but on the other hand, the Mohamedan rulers themselves in their own way began to make extensive grants for purposes charitabie and otherwise. Certainly, as it was only very natural, their charity had a leaning to their own institutions and places of worship namely mosques and *pallivasals* and only a few noble minded souls could rise above caste prejudices and endow as much in favour of Hindu institutions as they did in favour of their own. Then, on the question of personal grants, the Mohamedans were even more liberal than the Hindus, because, nothing was easier for them than to make grants of land or of the land revenue, accruing from their semi-subdued territories, and to dispense with money payments. Inams going by the name of *Jagirs* were purely of Mohamedan

origin and were granted sometimes in recognition of meritorious past services but more often as remuneration for future political or military services.

Under the British Government

The East India Company, when they became the masters of the province, did not, for more than one obvious reason, consider it wise to go back upon the grants made by earlier sovereigns; nor did they think it, any way inexpedient on their part to make such grants, whenever it was necessary, for instance, as when they had to remunerate services or to show their benevolence to people who helped them in the many intrigues and wars against the natives as well as the French. In fact, one of the reasons which prompted the Mohamedan invaders to continue the system of making grants weighed with the Company as well and made them also adopt the system. The East India Company, as all students of history know, inspite of all their victories, had not money enough to satisfy the calls from home; and as we saw in connection with the introduction of the permanent settlement, they were very nearly on the verge of bankruptcy. Consequently, they found it much easier to make grants of land or of its uncertain land revenue than make payments of cash which had reached the treasury after considerable labour. But, in these grants made by the Company at the early days of its rule, there was no consideration of any charity, but they were made merely as a matter of expediency. However, the policy based on expediency soon changed, and the Court of Directors on being informed as to the extent of the sacrifice of the

potential value of the lands involved in the grants, ordered by two of their despatches, dated the 2nd of January 1822 and the 27th May 1899, that grants of land or of land revenue should be made only in special cases and in all other cases money payments alone should be made. The order of the Directors was faithfully followed by the Company's servants and the grants were restricted to special cases. So we have it to day, that no grant is ordinarily made by way of pay or pension and it is resorted to only when the Government wants to show its favour to any one who has rendered valuable services to the state, by conferring on him properties of a permanent character. Even in the latter class of cases, we do not hear of grants of land entirely tax-free, as we had it in ancient days, but only grants of land subject to the payment of the ordinary tax. The difference is probably due to the fact which we have already referred to, namely, that a century or so back, the grant of land alone apart from the revenue payable thereon, was not worth much, while at the present day, the land by itself is sufficiently valuable and the addition of land revenue in the grant is therefore unnecessary. But, whatever the reason may be, the accepted practice seems to be merely to grant lands belonging to the Government, subject to the payment of revenue and make the grantee the proprietor of those lands. For instance, after the recent Great War, many of our soldiers who had served over-seas were granted small bits of land in recognition of their valuable services; but none of those grants seems to have been tax-free.

The foregoing discussion brings out, in general, the

policy and out-look of the successive Governments in regard to the grant of inams.

And so far, we have referred only to State-grants or grants made by the State or the Government, as distinct from private grants or grants made by individuals or by village communities. One of the striking features of the history of the Inam tenure in our country is, that not only the State but even individuals and village communities have been in the habit of making grants for various purposes both chairtable and otherwise. Probably, it is not a peculiarity of our *Baratha Varsha* alone, but a thing to be found in every country in the world, that pious men in every age, who have had the advantage of wealth as well, have considered it an act of great *dharmam* to make munificent grants in favour of temples, churches, and other religious or charitable institutions of the country. And so far as our province is concerned, if we just turn over the pages of the *South Indian Inscriptions* we will find, numerous instances of such grants.[1]

For example, in inscription 89 relating to *Chidambaram*, we have a grant by one Kallappalarayar of lands for the purpose of certain festivals; simliarly in No. 87 relating to *South Arcot*, there is recorded a grant of the assessment on certain lands already granted in Inam by one Chediyaran in favour of the same grantees, for the purpose of maintaining (1) certain learned Brahmins, (2) the keepers of certain water sheds and (3) the pujaris of a shrine. Again, we have in inscription No. 231 relating to *Bellary*, a grant of two *gadyanas* of grain (annually ?) in

1. Published in two volumes by Prof. Rangachari.

favour of a temple of Kalinatha Deva; and in inscription 490 relating to *Thiruvannamalai* a grant of land by an officer of state for lighting up lamps in the temple. Besides individuals, as we have already noted, village communities as bodies have made grants in favour of individuals as well as institutions. For instance, we have in one of the inscriptions relating to *Chingleput*,[1] that a grant of land by the village community of *Ayiraveli Parru* was made in favour of a shrine called *Vashanayanar* at *Arasarkulahal Nallur*; numerous other instances are also to be found in the book. The grants of this kind only show to us, what has already been said by eminent scholars, that communal life in an Indian village meant not merely a congregation of houses or of families but a corporate life coupled with a common interest shaped almost to perfection.

Here again, as we saw in regard to State grants, consideration of utility or of service had its own scope and gave rise to a different class of grants which may be generally described as *personal and service grants*.[2] Personal grants, so far as they were made by individuals, and we do not hear of personal grants by village communities, were made mostly in favour of dependents or retainers as remuneration for their services, daily, monthly, annual or sometimes merely occassional. Then, as regards service grants, it may be said, that all grants made by village communities partook the nature of service grants, because they were generally made in favour of village artizans,

1. No. 213.
2. We are now considering only *Private grants*.

on condition of the latter carrying out certain duties for the benefit of the community.'

During the periods of anarchy which followed the decline of the Hindu Dynasties and of the Mohamedan rule, the number of grants ascribable to individual donors rapidly increased ; for every petty chieftain and Zamindar and sometimes even officers of the state who wanted to usurp power and assume prominence, freely made extensive grants of land and of land revenue over which they had absolutely no right whatever, for the purpose of gathering strength as well as for increasing their pomp and prestige. Thus at the early part of the last century, from the historical stand point, there were three kinds of Grants (1) grants duly made or recognised by successive Governments (2) grants lawfully made by individuals of different ranks and positions and those made by village communities (3) grants by impostors during the periods of anarchy. These grants were for purposes charitable as well as otherwise ; they consisted either of land or of land revenue or of both. And the numerousness of these grants, coupled with the loss of the title deeds in regard to many of them by reason of their being ancient, made it very difficult for the revenue authorities to distinguish cases of genuine title from those of fraudulent ones.

The Inam Commission

It is, therefore, no wonder, that in the beginnings of the last century numerous people taking advantage of the policy adopted by the Government in the matter of respecting ancient grants, fraudulently called themselves inamdars and claimed exemption from land revenue. But this being a matter which involved a

large sacrifice of land revenue, the Government wanted to make an inquiry into the title of these supposed inamdars. The earliest measure which they adopted was a rough revenue survey. This was carried out in all the districts except Northern Circars and on these occasions, every village and field exempt from payment of revenue was carefully recorded. At that stage, however, the authorities had not sufficient opportunities to scrutinise carefully the title of each inamdar. Next, the Government passed a number of regulations,[1] with the object of again entering into the authenticity of the inams and of preventing them from being diverted from the purposes for which they were granted and securing to Government its reversionary rights in cases of lapse. But, these regulations proved quite ineffective in practice. For a pretty long time, the Government did not take up any measures to vindicate the law. Then, in the year 1845, they passed orders strictly prohibiting the local officers from continuing the inams, after the occurrence of lapses. This was followed in the next year by a proclamation notifying, that an adoption involving inheritance to inam lands should not be recognised unless reported at least six months before the death of the party making the adoption. In doing this, the Government really overshot the mark and the result was, that the inamdars as a class, resented the order. One Narasimha Reddy of Cudappa, actually rebelled against this order of the Government as being unjust and arbitrary. This event, led to a reconsideration

1. Regulations 31 of 1802; 4 and 6 of 1831, and Acts 31 of 1836 and 23 of 1838.

on the part of the Government, of the propriety of such a proclamation, and their eventually giving up the policy enunciated therein, and adopting a more liberal and a conciliatory one. Accordingly, the collectors were given the power to continue the inams in all ordinary cases, but they were asked to submit special cases, for the orders of the Board of Revenue and of the Government. But, at the same time, a notification was made prohibiting the inamdars without a sunnad from alienating their inam lands and warning other people from purchasing them. This notification, after some time, caused serious anxiety and discontent among the people. At length, the Government realised about the year 1857 that it was high time for them to make a thorough inquiry into the titles of the inamdars and remove the uncertainty and inconvenience caused by their notification.[1] So the Madras Inam Commission was constituted on the 16th of November 1858, with Mr. G. N. Taylor as its head.[2]

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1. They said in their order dated the 19th January 1857, p. 14 Inam papers. "Of the Justice and necessity of an investigation of the titles of inamdars there seems no room for question. It is just necessary for two opposite objects; on the one hand to vindicate the just rights of the state, meaning thereby not the government but the great body of the public, by retrenching exemptions and priveleges standing on no valid ground and injurious to the payers of revenue generally; and thus making it practicable to lighten the burden of taxation to the general body or to devote larger amount annually to the execution of public works for their advantage. And on the other hand to confirm the titles of the rightful holders of inam. This second object is scarcely less important than the first. At present the tenure of inam land is so uncertain, being dependent on arbitrary rules, little known and liable to continual change and the title being subject to interference and inquiry on every lapse, that it is undoubtedly less valuable as property than it otherwise would be."

2. This history is given in Blair's report on the operation of the Inam Commission. Part IV, p. 203 Inam papers.

The commission consisted of the commissioner, two assistant commissioners and a number of deputy collectors appointed as members. The commission continued its work till 1862, when on account of financial stringency, it was abolished and the remaining work was entrusted to be done by one of the members of the Board of Revenue who was also appointed *proforma* the Inam Commissioner for all legal purposes.

Its working

The main business entrusted to the commission was to scrutinise the titles of the various inamdars throughout the presidency and in cases where they were satisfied as regards the title, to issue deeds of title on behalf of the Governor of Fort St. George in council, recognising the titles of the inamdars; also, if the Inamdars whose titles had been so proved consented thereto, to enfranchise their inams under the rules framed by the Government.

The term *enfranchisement* may probably require some explanation. It simply means, the Government giving up its reversionary right, so that, the inam lands might, on such enfranchisement become ordinary ryotwari property freely transferable as well as heritable. The advantages of such enfranchisement will be clear, when we consider the nature of the various inams as well as the power of the Government to resume them. For, it must be noted, that all grants were not made heritable and transferable, nor were they made always in perpetuity. Some of them were, for instance, for life or lives only, and some others, though in perpetuity, were inalienable and could continue only so long as there

were lineal descendants of the grantee or only so long as certain specified services were performed. In all these cases, therefore, it was distinctly an advantage to purchase the reversionary right of the Government on condition of payment of quit rent or otherwise.

The rules framed by the Government in regard to the adjudication and enfranchisement of inams, by the commission were briefly as follows :[1]

Adjudication

1. Land which is proved to have been held uninterruptedly as inam for a period of 50 years, with or without Sunnad, will be treated as inam possessed under a valid title, whatever may have been its origin.

2. Where such proof may be wanting merely by reason of lapse of time and the probability is, that the inam is older than 50 years, then also, valid title will be deemed to have been made out.

3. In the absence of a valid grant or other title deed, entries in village accounts and other Government registers will be accepted as proof of title.

4. In the case of inams less than 50 years old, stricter proof will be required; and even where the inams have been irregularly or fraudulently granted, by subordinate Revenue Officers or Zamindars, the inams may be recognised, but subject to the payment of quit rents according to the scale prescribed in regard thereto.

5. On the validity of an inam being established by the inquiry conducted by the commission, a title deed

1. Printed in B. S. O. 1920 Edn. Vol. II pp. 294 to 302. The above is a summary of what is contained in B. S. O.

will be issued to the inamdar acknowledging his title to the inam on its present tenure, and specifying the terms upon which the tenure may be converted into a freehold.

Enfranchisement

1. For the purpose of enfranchisement, inams are classifiable under the following heads:

A. Inams in favour of religious and charitable institutions and for services therein.

B. Personal or subsistence grants.

C. Grants by former governments in remuneration for services in the Revenue or police departments which are no longer rendered or required.

D. Village Service inams in regard to police or Revenue Services still rendered;

E. Village Service inams enjoyed by artizans and others for services rendered to the village communities.

(Class A.)

2. The inams coming under class A will be continued to the present holders and successors and will not be subject to further interference so long as the terms of the grant are fulfilled and the institutions are maintained in an efficient state.

(Class B.)

3. Where the inam is heritable and there is probability of succession, it may be enfranchised at $\frac{1}{8}$ the normal assessment.

4. Where the inam is heritable but there is no possibility of succession beyond the lifetime of the holder; or that grant itself is merely for the life of the grantee or the holder, the enfranchisement should be at ½ the normal assessment.

5. Where the inam is heritable, but the succeeding heirship[1] is terminable or limited as in the case of a wife or a childless widow or daughter; or the grant itself is more than for one life, and the present holder is not the last of the lives; then the enfranchisement should take place at ¼ the normal assessment.

6. Where the fixing of the quit rent in reference to the normal assessment is inconvenient, the Commissioner may, after consulting the Collector and the Board of Revenue, adopt a fixed rate of quit-rent per acre of land.

7. In the case of recent grants, that is to say, grants less than 50 years old, which are either founded on fraud or have been granted irregularly or by persons without authority, the following special rules should be applied, namely,

(a) Where the inam is founded on fraud and the present incumbent was a party to such fraud, full assessment should be levied.

(b) Where the inam is founded on fraud and the present incumbent was not a party to such fraud, indulgence may be shown to him and it may be enfranchised at 2/3 the normal assessment.

1. The one succeeding the present incumbent.

(c) Where the grant was irregular or unauthorised, but nevertheless, by reason of the lapse of time, it is entitled to consideration, it may be enfranchised at $\frac{1}{2}$ the normal assessment.

(d) Where the grant was by a Zamindar, poligar, or other landholder, contrary to the provisions of S. 12 of Regulation XXV of 1802, the Government is entitled to resume it at any time, but may be dealt with by the commission under clauses (a) to (c) Supra.

Class C

8. Where the services have been discontinued and thus the grants have already been converted into mere subsistence inams, the same rules as those mentioned in regard to class B will apply.

9. Also, where the services have not already been discontinued but are to be discontinued in future, the same rules will be applicable, but subject to this, that the quit rent levied will be not only in consideration of the Government's reversionary right, but also in consideration of the services to be discontinued.

Class D*

10. These inams are to be enfranchised generally at $\frac{5}{8}$ the normal assessment.

11. Where the inams are already subject to quit rent, the additional levy shall be such that the total assessment shall not exceed $\frac{3}{4}$ the normal.

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* Certain rules originally framed were not acted upon; and the rules above given were the rules which were in fact acted upon.

12. Where the existing jodi is greater than the full assessment, the inamdar should be given the choice to hold the land at the full assessment, either under an inam title deed or under ryotwari patta.

Class E

13. Where services are still needed, the inams will be treated as hereditary grants and will be confirmed to the holders or their heirs subject to the continued performance of the requisite Services.

14. Where services are no longer required, they will be dealt with under rule 9.

In general

15. Where an inam, not coming under rule 11 above, is already subject to a quit rent, the amount of such quit rent shall be taken into account in fixing the additional levy, so that, the total shall come to ½, ¼ or ⅛ the normal, as the case may be.

16. After the amount of annual quit rent has been once fixed for the purpose of enfranchisement, it will be open to the holder to redeem it outright by paying, at once, a single fixed sum equal to 20 times the value of such annual quit rent.[1]

17. The above rules 1 to 16 are applicable so far as they may be, to cases which still remain to be settled. But the '50 years' and the like periods mentioned in the rules should be reckoned up to the date of the institution

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1. This rule applied to cases which came for redemption prior to 28th February 1995 ; subsequently, the amount was raised to 30 times the quit rent. Now no redemption at all is allowed.

of the Inam Commission and not up to any subsequent date.

Considering the circumstances under which the commission came to be appointed, it had really an arduous task to perform ; and it must be said to its credit, that in spite of the many obstacles it had to encounter, and the minuteness and patience with which the inquiries had to be conducted, it performed its part very well and gained the admiration of the Government and of the public alike. But, unfortunately, owing to financial stringency, the commission had to be dissolved in the year 1869 with its task partly unfinished.

As we already saw, the title deeds issued by the commissioner in favour of the inamdars were done in the name of the Governor of Fort St. George in Council and not in the name of the Secretary of State for India in Council. It was, however, soon pointed out, that under Statute 22 & 23 Victoria C. 41, such title deeds could not bind the Government, unless they had been issued in the name of the Secretary of State for India in Council. Consequently, the Parliament passed a new Act 32 and 33 Victoria C. 29 validating all title deeds there-to-fore issued by the commission, as if they had been properly issued in the name of the Secretary of State in Council.

Also, the title deeds issued by the Commissioner after due inquiry, according to the forms prescribed by the Government, appeared in many cases to convey to the inam holders a more extensive right than was intended to be given or than could be legally given ; and these deeds were constantly misconstrued so as to affect the rights and interests which persons other than the inam

holders had in the lands from which the inams were derived or drawn. For instance, the language used in some of the deeds gave colour to the interpretation, that the inam holders in whose names the deeds were issued, were made the absolute proprietors of the inam lands, even to the prejudice, for instance, of the tenants who had, prior to the issue of such deeds, permanent rights of occupancy in such lands. This defect having soon been brought to the notice of the legislature, it passed the Inams Act VIII of 1869 Section 1 of which declared *interalia*, that nothing contained in any title-deed there-tofore issued by the Inam Commissioner should be deemed to define, limit, infringe, or destroy the rights of any description of holders or occupiers of lands from which any inam was derived or drawn, or to affect the interests of any person other than the inam holder named in the title deed.

Since the dissolution of the Inam Commission, the Collectors, acting under the supervision of the Board of Revenue, have settled many inams in the several districts, on the same conditions and subject to the same rules as those adopted by the Inam Commission. At the present day, there is practically no inam which has not been scrutinised either by the inam commission or subsequently by the Collector, though some of them still remain unenfranchised.

The inams that are to be found to-day scattered over various parts of the presidency may conveniently be classified under 9 different heads.[1]

1. This is the classification adopted by the Inam Commissioner in his report on the Inam Settlement, Part IV p. ?11 Inam Papers.

1. Those held for the Support of Religious institutions and for services connected therewith.	I *Religious* and *Charitable* (Service inams)
2. Those held for charitable purposes of public utility.	
3. Those held by Brahmins and other religious classes for their personal benefit.	II *Personal inams.*
4. Those held by families of ancient princes and poligars and those who held heriditary offices of trust under former Governments.	
5. Those held by the kinsmen dependents and followers of former poligars and Zamindars.	
6. Those connected with the former general police of the country.	
7. Those held for the support of works of irrigation yielding public revenue.	III *Service Inams.*
8 Those held for ordinary village revenue and police Service.	
9. Those held by various descriptions of artisans for services due to village communities.	

But as has been indicated by the descriptions given in against these heads, a more scientific classification would be into

I Religious and charitable inams. (Comprising 1 & 2).
II Personal inams. (Comprising 3, 4 & 5).
III Service inams. (Comprising 6, 7, 8 & 9).

I. Religious and Charitable inams.

1. *Devadayam* : Religious inams generally go by the

name of *Devadayam*, the term *Devadayam* being derived from the term *Deva* meaning *God* in Sanscrit. In Malabar, however, the name *Devaswam* is used. This class comprises of inams granted to temples, as well as to temple servants such as pujaris, pattars or Gurukkals who are in charge of the worship of the temples. In the case of some of the ancient temples, such as those at Tirupati, Conjeevaram, Srirangam, Rameswaram and Madura, we have large and extensive grants made specifically in the names of the presiding deities and these are enjoyed by the temples without any reference to or right in the people who carry on the Puja. Similar are some of the inams enjoyed by the ancient mosques and darghas as well as a few Christian Churches here and there, particularly in the districts of Tanjore and Tinnevelly. But, in other cases, which form by far the greatest number, we have small grants of land or of land revenue, granted not specifically in favour of the presiding deities, but in favour of the pujaris or people in charge of the worship, burdened, however, with the duty of carrying on the puja in the temples. These latter classes of inams are strictly speaking partly personal and partly service, for they seem to have been intended as much for the support of the pujaris as for that of the temples themselves. These considerations will be material when we come to consider the resumability or otherwise of these inams.[1]

1. For purposes of resumption these are treated as public service inams and not as private service inams. In *Sundarachariar* v. *Ali Md.* 44 M.L.J. 649, $\frac{2}{3}$ was for charity and $\frac{1}{3}$ for personal benefit. Held Public Service inam. The valuable endowments attached to the mutts or religious headships, however, present some difficulty. These endowments are under the control of matathipathis or thambirans, whose position is, according to the

2. *Dharmadayam*: The term Dharmadayam is generally applied to charitable inams, that is to say, inams granted for the support of chatrams or choultries, water-sheds, topes, mandapams, flower gardens, wells, ponds, tanks, bridges, village schools and Veda Patasalas. These inams, again, are enjoyed either by the institutions *per se*, or by persons subject to the obligation of maintaining these institutions. For instance, we very often come across inams for the maintenance of water sheds, but these inams are found to have been invariably granted in favour of persons or families but subject to the duty of maintaining the water sheds in certain seasons of the year at a particular place or places. Naturally, complicated questions have arisen regarding the partibility and resumability of these inams and we shall discuss them under subsequent heads. It may also be noted here, that in recent times, the management of some of these charitable institutions, such as choultries and schools, have been taken over or entrusted to the Local Boards, and the inams attached to these institutions have also in consequence passed into the hands of such Local Boards.

II. Personal Inams.

Under class (3) mentioned above, that is to say, inams held by Brahmins and other religious classes, come the inams known as *Batta vritti*, *Shothriam*, *Khyrati*, *Agraharam* etc.

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latest judicial pronouncements, not that of a mere trustee, or agent, but that of an owner with certain limitations. These endowments, therefore, will fall more appropriately under the second division above referred to rather than under the first.

Of these, the first three designate inams in favour of individuals, while the last one designates an inam in favour of a community of Brahmins.

Bhatta Vritti. The term *Bhatta* signifies Brahmin and *Vritti* livelihood; so that, the expression *Bhatta—Vritti* means an inam given for the maintenance of a Brahmin. There are numerous inams of this kind, but most of them are small.

Srotriam. This is again another kind of inam made in favour of Brahmins learned in Vedas, and is derived from the Sanscrit term *Sruthi* meaning Veda

Khyrati. This is a Mohamedan inam corresponding to *Bhatta Vritti* and *Srotriam*.

Agraharam. *Agra*=first and *hara*=take away. *Agraharam*, therefore, literally means the body of first takers or participators (in the income of the Government). This is the name given to the inams made in favour of communities of Brahmins, as opposed to individual Brahmins. The Agraharam inams are themselves divisible into various classes such as *Sarva agraharams*, *Bilmukta agraharams*, *Jodi agraharams*, and so forth *Sarva agraharam* is one which is absolutely tax-free; *Bilmukta agraharam* is one, the tax whereof (presumably at a favourable rate) is payable in a lump sum; and a *Jodi agraharam* is one which is subject to the payment of a quit rent. The characteristics and incidents of these inams very largely depend upon the terms of the original grants or deeds of subsequent confirmation etc., and the names *per se* do not count for much. It will, therefore, be very unsafe to predicate the incidents of any of these

inams merely from the name they bear. For instance, some of them may be of land alone, or of the land-revenue alone, while others may be of both ; similarly, some of them may be only for a life or lives while others may be in perpetuity ; again, some of them may be inalienable, while others may be freely alienable as well as heritable. And we have already seen in the Introduction, that though there was at one time some presumption in regard to these grants, on the question whether these grants were of the land-revenue alone or of the land as well, there is now no presumption and each grant has to be determined on its own terms so far as they could be ascertained from the evidence available.

Class (4) comprises of inams going by the name of *Jagirs, inams Altangah, Deshmuk* and *Despanday* inams and similar grants. Of these, the first mentioned, namely, the Jagirs are the most important. These, as we have already seen, are purely of Muhammadan origin, though in later times the term Jagir came to be used rather indiscriminately. Professor Wilson describes the grant thus in his Glossary. "This is a tenure common under the Muhamaden Government in which the public revenues of a given tract of land, were made over to a servant of a state, together with the powers requisite to enable him to collect and appropriate such revenues and administer the general Government of the district. The assignment was either conditional or unconditional. In the former case, some public service, as the levy and maintenance of troops or other specified duty was engaged for. The latter was left to the entire disposal of the grantee. The assignment was for a stated term or

more usually for the life of the holder, lapsing on his death to the state, although, not unsually, renewed to his family on payment of a fine or *Nazarana* and sometimes specified to be a heriditary assignment; without which specification, it was held to be a life tenure only.

"A Jagir was liable to forfeiture on failure of performance of the conditions on which it was granted or the holders incurring the Emperor's displeasure. On the other hand, in the inability of the state to vindicate its rights, a jagir was sometimes converted into a perpetual and transferable estate; and the same consequence has resulted from the recognition of sundry Jagirs as heriditary by the British Government, after the extinction of the Governments by which they were originally granted, so that they have now to be considered as family properties, of which the owners cannot be rightly dispossessed, and to which the legal heirs succeed as a matter of course, without fine or *Nazurana*, such having been silently dispensed with. Generally, in the case of Jagirs, the object and character of the grant was specified by the designation attached to it. The term is also used with some license to designate temporary grants, allowances or stipends from the Government to individuals."

Professor Maclean has given a similar description in his manual Vol III and says that the expression *Jagir* is derived from the Turkish term *Jah* meaning 'place' or 'land.'

In Mahratta country the name corresponding to *Jagir* is *Saranjan*, though the term Jagir itself is not infrequently used, and the incidents of the tenure have

been described by Mount Stuart Elphinstone in his History of India Appendix D practically in the same way as Professor Wilson has done.[1]

The above description brings out prominently the one primary object for which the *Jagir* grants were originally made, namely, the rendering of military service. But, in course of time, these grants instead of being limited to cases of military service, came to be made for various other purposes, such as for the maintenance of a dethroned prince, a pensioned officer of state or the relatives of the grantee. For instance, the Jaghir of *Arni* was acquired early in the 17th century by one Vadaji Bhaskar Punt in the following manner. The said Vadaji accompanied Shaliji in his expedition into the Carnatic and on the close of the expedition, he was granted the estate in reward for his military services on a moderate annual nuzzar of Rs. 10,000.[2] Similar, but more interesting is the history of the estate of *Sandur*.[3]

Thus, in short, the jagir grants very much resembled the old palayams, but probably with this difference, that the Jagirdars were more peaceful and obedient to the sovereign power than the old poligars. As a matter of fact, some of the ancient princes and poligars who were either subdued or deprived of their powers and reduced to the position of mere landholders came to be called Jagirdars.

The conditions of a Jagir, as of any other inam, de-

1. See 4 B. H. C. R. p. 1.
2. N. Arcot Manual p. 245.
3. See Bellary Manual p. 243.

pends entirely upon the terms of the grant.[1] But, with regard to Jagir grants in particular, there is a well recognised legal presumption which may be noted at this stage. That presumption is that a jagir is *prima-facie* for life only and is neither heritable nor partible. This was laid down by the Privy Council as early as in *Gulab Das* v. *Collector of Surat*,[2] and has been subsequently followed by a long series of cases.[3] Where, however, there are clear words in the grant expressing a contrary intention, effect will be given to the same. For instance, in *Dosibai* v. *Ishwardas*,[4] the operative words of the grant were "to A. B. and his heirs for ever as Jagir," and the Judicial Committee held that the deed contained clear words of inheritance and was, therefore, heritable.[5] In the 36 Bombay case above cited, it was further laid down by the Privy Council, that *prima-facie* a Jagir was a grant of the land revenue alone, but not of the land; but how far this last statement is still good law is more than doubtful in view of the latest rulings of the Privy Council referred to in the Introduction.[6]

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1. No military service is ever demanded by the state from any of the Jagirdars at the present day, because, on the ground of public policy, all such services were abolished by the British Government in the early part of the last century.

2. 3 B. 186.

3. *Raghoji Rao Sahib* v. *Lakshman Rao Sahib*, 36 B 639 P.C.; *Ram Narayin Singh* v. *Ramsaranlal*, 46 C. 683 P.C.; *Deo* v. *Ganesh Narayin*, 70 I.C. 232; *Guru Mahadeb* v. *Jagat Raj Kuer*, 71 I.C. 929.

4. 15 B. 222 P.C.

5. See also *Satharam Govind* v. *Trimbak Rao*, 45 B. 694 and *Golam Nabi* v. *Basudeb Das*, 69 I.C. 849.

6. Both these characteristics are pointed out by the Madras High Court in *G. Sam* v. *T. Ramalinga Mudaliar*, 40 M. 664. The passage in 36 B. at 658 runs as follows: "As to the tenure on which the lands were held, the

Altangah inams :—Grants known as *Altamgah inams* are more common in the Bombay than in the Madras Presidency. *Al* in Turk means 'red' and *tangah* means 'seal'; so that *Altangha* means a grant under a red seal. The name by itself will not determine the nature of the tenure. For instance in 2 M.I.A. 390, it was observed by the P.C., that, though the grant was described as *Altamgqh*, it was in fact a religious inam subject to service and was consequently inalienable. However, in *Krishna Rao Ganesh* v. *Renga Rao*[1] it was held, following the observations in 7 M I. A. at 132 and other cases, as also the description given in Wilson's Glossary, that the grant was both perpetual and alienable and was irresumable by the grantee. Therefore, we cannot postulate the incidents of the inam without reference to the particular grant in question.[2]

Deshmuks and Despandays were former officers of state entrusted with responsible revenue and police duties in the country. Some of the grants made in favour of these persons were extensive and since the abolition of these services by the British Government, the inams have come to be purely personal, free from any burden of service.

The *Amarams* of North Arcot and the Circars, the *Bissoyees* and *Dorattanams* of the Hill tracts of Ganjam

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whole of the lands previous to the regrant in 1862 were 'Jagir' lands, implying no grant of the soil, but a personal grant of the revenues to the grantee. A grant of such lands was personal, not heriditary and resumable at pleasure. The grant being personal and temporary, the lands were necessarily impartible."

1. 4 B.H.C.R. 1.
2. For a discussion see 4 B.H.C.B. 1, above referred to.

and of Vizagapatam, the *Mukhasas* of Krishna, the *Oomlikays* of Salem and the *Jivithams* of Madura are instances of inams coming under class (5).

Amaram. This has been described by the Author of the Nellore District Manual, to be an inam granted in favour of military 'peons' by the ancient poligars and princes; and it has also been said that the tenure takes its name from *Amar* signifying ease. But, investigation shows, that the learned author is somewhat wrong both in the use of the word 'peon' as well as in tracing the origin of the term to some word signifying ease. *Amar* is atamil word which signifies war, as for instance, in *Amarkalam* (அமர்க்களம்) meaning 'the field of battle'; and *Amarakar* has been correctly translated as "the head of a thousand Sepoys" (ஆயிரம் காலாட் தலைவன்) by K. Namasivaya Mudaliar in his Tamil Lexican. Professor Maclean also describes it in similar language. Further, the word 'peon' is generally used to describe a menial and is therefore not appropriate to describe the military officer or chief in whose favour the inam was made.

Quite in consonance with the nature of the services for which the grant was made, the inam was descendible from father to son without any difficulty, but, when there was no son and some other heir wanted to succeed to the inam, the permission of the poligar or other grantor was necessary; and in any event, no female was allowed to succeed, for women are not capable of rendering any military service.

It must also be noted, that, as in the case of *jagirs*, though primarily *Amaram* grants were made only

for military services, yet they were also made for the maintenance of the relatives or dependents of the poligars or other men of high position on condition of some nominal service, which was however neither demanded nor rendered.

According to the author of the Nellore District Manual, the *Amarakars* being the superior class of military men, they were allowed to choose their own weapons instead of being compelled to fight with the weapons provided by the poligars which was the case with regard to the inferior class of military peons called *Kattubadis*.[1]

Dorattanams. These inams were largely found in the District of Ganjam. The holders of the inams were called *Doras* and they were bound to maintain the security of the country and prevent the incursions of the Sowras and other hill tribes.[2]

Bissoyees These resembled Dorattanams and were largely found in Vizagapatam.

Mukhasas These were inams found in some of the Northern districts especially in Krishna, and were held by military chiefs and men of high position and influence and sometimes the relatives of Zamindars and poligars on condition of service of an honarary and almost of a nominal nature.[3]

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1. For further details see Nellore Dt. Manual p. 265.

2. Proceedings of the Inam commissioner dated the 5th February 1862. p. 149 Inam papers.

3. Proceedings of the Inam Commissioner dated 25th Jan. 1862 Vizagapatam, p. 142 Inam papers.

Jivithams and Oomlikays. These were grants made by Zamindars and poligars in the Districts of Madura and Salem in favour of their relatives and dependents on a sort of feudal service and for maintenance and resembled *Mukhasas* of the Northern Districts.

Class (6) comprises of inams held by *Kattubadis* a class of peons who discharged police, military and not infrequently revenue duties as well. These were called into existence by the poligars who remunerated them by assignments of land and paid them batta besides, while on actual service and were chiefly employed in the hilly and inaccessible parts of the country.[1]

Kattubadis were of two classes *Grama Kattubadis* and *Jangi Kattubadis.* The former were strictly village servants or peons and were required to perform services throughout the year. The latter were only called out for service on emergent occasions.[2] *Jangi Kattubadies* were also called *Palayam Kattubadies* in some places.[3]

Kattubadi inams are found in the greatest number in the Ceded Districts, and North Arcot. They are also found in the Circars.

On the introduction of the British rule, the Kattubadi inamdars were left in the quiet possession of their inams, but seldom called out for duty. The inams of this class have now been mostly enfranchised, and where they are not enfranchised, they are treated merely as personal inams free from any burden of service.[4]

1. Proceedings of the Inam Commissioner dated 27th Feb. 1863, Coimbatore. Inam papers p. 249.

2. Inam papers, p. 313 and Ibid appendix B, p. 325.

3. Ibid p. 319.

4. Ibid.

The distinction between *Amarams* and Kattubadis is described by the Inam commissioner thus: "Both *Amarams* and *Kattubadis* were military tenures subordinate to the Zamindar or poligar. But, the amarams were held by the relations of Zamindar or other men of high position upon a more honarary tenure of service than the Kattubadis. Amarakars may be regarded as military chiefs, while the Kattubadis were inferior peons subject to more frequent service.[1]

Class 7 :—The most common instance of inams coming under this class is what is known as a *Desabandham inam. Desabandham inams* were originally made with a view to encourage the construction of irrigation works in districts enjoying poor irrigation facilities. Consequently, these inams were found in large numbers, in the Ceded Districts, the Western portions of Guntur, Nellore, North Arcot and Salem. The extent and value of a *desabandham* inam varied with the capital expended by the inamdar in the construction of the work and the cost that might be necessary for keeping the irrigation work in repair; to some extent, it also depended upon the increase in the land revenue on account of the work.

In all ordinary cases, *Desabandhamdars are* under an obligation to maintain the irrigation works in repair. In some cases, however, such a condition was either not attached, or it had not been enforced for a long time, so that they were treated and enfranchised as personal inams at the time of the Inam Commission and even subsequently.[2]

1. Proceedings of Inam Commissioner dated the 31st July 1860 (Nellore). para. 6. Ex. 82 Venkatgiri Zamindary case.

2. P. 312 Inam Papers.

Desabandham inams were and continue to be of two different kinds. They are, *Kanda Desabandhams* or grants of land made in specific localities and *Shamilat Desabandhams* or inams consisting of assignments of portions of revenue accruing from lands irrigated by the works concerned. Inams of the latter description, not having been localised, were not brought on the inam registers at the time of the inam settlement.

In ryotwari tracts—

In ryotwari tracts, the Collector may resume and levy the full assessment on any *desabandham inam*, if the inamdar, after due notice, fails to carry out the necessary repairs to the works for the upkeep of which the inam was granted. But, so long as the works are maintained in proper repair, the inamdars, in addition to the benefits under the original grant, are allowed to participate in the enhanced revenue derived from the works, they maintain. For instance, *Shamilat Desabandhamdars* are generally allowed a share in the profit of dry land irrigated in excess of the registered area, proportionate to the Shamilat inams they enjoy, and *Kandam Desabandhamdars* are given two per cent of the water-rate leviable on the extension of cultivation. The inamdars are also allowed some share of the *fasal jasti revenue* levied on lands under the Desabandham tanks and channels maintained by them.

In Permanently Settled estates and whole Inam villages.

Desabandham inams, situate in a permanently Settled estate, whether great or small, are resumable by the proprietor of the estatedistinct lack of for nay service

by the inamdar, and the Government claim no reversionary right in respect of the same. The reason of this rule is stated to be, that under the permanent Settlement, the responsibility for maintaining tanks and other irrigation sources having been transferred from the Government to the Zamindar, and *Desabandham inams* being alienations from the revenue to which the zamindar would otherwise be entitled, on condition of the inamdar maintaining the irrigation works in repair; if the inamdar fails to perform the service and the liability therefore devolves upon the zamindar, it is but just and proper, that the zamindar should be entitled to resume the inam. The foregoing rule applies also to *desabandham inams* situate in whole inam villages.[1]

Kalingula manyam, is a particular variety of *desabandham* and is granted for having constructed or maintaining sluices.[2]

The 8th class comprises of inams in favour of the *monigars* or village headmen and *Kernams* or village accountants and probably also includes those in favour of village *Talayaries* and *rettians*, appointed for the assistance of the village headmen and the accountants. These inams, often times, consisted of the land revenue alone, but sometimes both of the land and the land revenue. As we have already seen, on account of certain difficulties in the way, these inams were not enfranchised by the Inam commission in the first instance and they were

1. Boards Standing Order 56. The rules for the maintenance and repair of desabandham tanks are now contained in Appendix III to B.S.O. Vol. II p. 304.

2. Appendix B Inam papers.

subsequently enfranchised by a special commission. Now, most of these inams are enfranchised and reduced into freehold property.

The 9th and the last class consists of inams in favour of the village artizans, such as the prohit, the doctor, the black smith, the Carpenter, the washerman, the barber the astrologer, the panchangi and so forth. These inams generally consisted of land as well as of the land revenue. In this connection we may advert to one special kind of inam known as *Kasavargam.* This consisted of a grant of house sites for village artizans on conditions of service. How and when these inams could be resumed, is a matter of some difficulty and could be solved only with reference to the terms and conditions of the particular grant in question.[1]

ii The Law

Having so far considered the *Inams* from the historical and descriptive points of view, we may now pass on to study the law regarding the subject.

Importance of the Inam Title deed and The Inam Register

We saw in the foregoing section, the circumstances under which and the purpose for which the Inam Commission came to be constituted, and how far the commission succeeded in the task entrusted to it. We also saw, that the inam commissioners, either by themselves or through their subordinates, closely scrutinised the titles of the various inamdars and when they were satisfied on the question of title, they issued title deeds in favour

1. 'The general incidents are given in *Nadarsa Rowthen* v. *Amirtham*, 23 M.L.J. 1.

of the Inamdars concerned, in token of the Government having recognised the validity of the inams; and in cases where the inamdars were willing to have their inams enfranchised under the rules framed by the Government in that behalf, the inams were further enfranchised and title deeds recording the fact of enfranchisement were issued. The commission, besides issuing the title deeds, recorded the result of their inquiry including the fact of enfranchisement with regard to every piece of inam, in a register called the Inam Register, authenticated extracts whereof could and can still be had for a small fee. Act IV of 1862 provides, that a title deed issued by the Inam Commissioner or an authenticated extract from the Register of the commissioner or collector shall be deemed sufficient proof of the enfranchisement of the land previously held on Inam Tenure. The effect of the above provision is, that the production of the title deed where such is available or a certified extract from the inam register, will be sufficient proof of the enfranchisement of an inam, when the fact of enfranchisement is in question. But, apart from this, what is the value of an Inam Register or of a Title Deed issued by the Inam Commissioner? As we have already indicated and as a glance at the extract from an Inam Register printed at the appendix will show, the Inam Register not merely recited the fact of confirmation or of enfranchisement, but also contained a record of the nature of the inam, the present and the past incumbents thereof, the extent or quantity and the condition or conditions on which the confirmation or the enfranchisement was made.

1. Section 2.

The question is, how far the Inam Register may be relied upon as evidence of the facts contained there in, such as for instance, the nature of the Inam or the conditions of the Grant? This question has been answered by their Lordships of the Judicial Committee in one of their recent pronouncements which runs as follows: It is true that the making of this register was for the ultimate purpose of determining whether or not the lands were tax free. But, it must not be forgotton that the preparation of this register was a great act of state, and its preparation and contents were the subject of much consideration under elaborately detailed reports and minutes. It is to be remembered, that the Inam Commissioners through their officials made inquiries on the spot, heard evidence and examined documents and with regard to each individual property, the Government was put in possession not only of the conclusion come to as to whether the land was tax free, but of a statement of the history and tenure of the property itself. While their Lordships do not doubt that such a report would not displace actual and authentic evidence in individual cases, yet the Board, when such is not available, cannot fail to attach the utmost importance, as part of the history of the property, to the information set forth in the Inam Register."[1]

Besides the evidentiary value above referred to, there is one other very important consideration in regard to Title Deeds and Inam Registers which deserve our attention. Most of the inam grants have been originally made not by the British Government but by the former Native

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1. 43 Mad. at p. 263.

Governments; and it is only as a matter of state policy that all or most of them have been subsequently recognised and confirmed by the British Government. At the time of the Inam Commission, the titles of the various inamdars were carefully examined, and when the commission was satisfied that the inams had been held under proper titles, they were confirmed and in many cases also enfranchised subject to certain conditions; where on the other hand, the inams were held under defective titles, but yet by reason of lapse of time or similar considerations, the inamdars deserved some indulgence, the inams were confirmed and enfranchised in favour of the holders, but on stricter terms. In every case, however, the Inam Commissioner imposed certain terms, which according to the rules framed by the Government in that behalf, represented the conditions subject to which alone the Government were prepared to confirm or recognise the inams. For instance rule 5[1] which deals with personal inams says "If the present incumbent is a descendant of the original grantee, etc., etc..........the inam will be continued to him hereditarily, subject to the existing conditions of the tenure *as they have been interpreted by the Government*. That is to say (1) Succession is limited to direct lineal heirs and undivided brothers. (2) The inam escheats to Government on failure of such heirs. (3) Alienation of the inam is prohibited. And (4) adoption, except out of the family of an undivided brother or cousin is not recognised."

Let us take a case which was free from any or all of these conditions prior to the Inam Settlement under the

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1. See B. S. O. Vol. II p. 295.

original grant. What are the terms which should Govern the inam, subsequent to the settlement ? Is it the terms of the original sunnad, or the terms above referred to imposed at the time of the Inam Settlement ? And if it is the latter on what legal basis ? We know, that it is a well known principle of constitutional law, that when cession or conquest of a territory takes place, the new sovereign is not in law bound to recognise all or any of the rights of the subjects of the conquered or ceded territory, as they might have stood possessed against their old sovereign and that the only rights which those subjects can legally enforce against the new sovereign are those, which such new Sovereign has been pleased to recognise and confirm. It is with reference to such a situation that Lord Kingsdown delivering the judgment of the Judicial Committee of the Privy Council laid down the rule of law as early as 7 Moore's Indian Appeals 476,[1] "It may have been just or unjust, politic or impolitic, beneficial or injurious, taken as a whole, to those whose interests are affected. These are considerations into which their Lordships cannot enter. It is sufficient to say that, even if a wrong has been done, it is a wrong for which no Municipal Court of Justice can afford a remedy."

So, then, the correct legal position is, that inasmuch as the new sovereign, namely, the British Government was not bound at all to recognise the old rights, they were certainly entitled to recognise them subject to whatever terms they might choose to impose on them. But, however, once, they did recognise all or any of the rights,

1. *S. of S. v. Kamatchee Bai Sahiba.*

no further alteration could be made by them at their pleasure, because, there can be no question of an act of state between the Government and its subjects. This interesting question, of how far the terms of the old sunnad are binding on the British Government arose in regard to certain Kasbatis in the presidency of Bombay and their Lordships of the Judicial Committee in laying down the law above referred to explain the rationale of the same as follows :[1]

" Before dealing with the action which the Government of Bombay took in reference to this village of C on receipt of these reports, it is essential to consider what was the precise relation in which the Kastbatis stood to the Bombay Government the moment the cession of their territory took effect, and what were the legal rights enforceable in the tribunals of their new sovereign, of which they were thereafter possessed. The relation in which they stood to their native sovereigns before this cession, and the legal rights which were enjoyed under them, are, save in one respect, entirely irrelevant matters. They could not carry in under the new *regime* the legal rights, if any, which they might have enjoyed under the old. The only legal enforceable rights they could have as against their new sovereign were those, and only those, which that new sovereign, by agreement express or implied or by legislation, chose to confer upon them. Of course, this implied agreement might be proved by circumstantial evidence, such as the mode of dealing with them which the new sovereign adopted, his recognition of their old rights, and express

1. *S. of S. for India in Council* v. *Bai Raj Bai*, 39 B. 625.

or implied election to respect them and be bound by them, and it is only for the purpose of determining whether and to what extent the new sovereign has recognised these ante-cession rights of the Kastbadis, and has elected or agreed to be bound by them, that the consideration of the existence, nature or extent of those rights become relevant subject matter for inquiry in this case. This principle is well established, though it scarcely seems to have been kept steadily in view in the lower courts in the present case. It is only necessary to refer to two authorities on the point, namely, the case of *The S. of S. for India in Council* v. *The Kamachee Bai Sahiba,*[1] decided in 1859 and *Cook* v. *Srigg*[2] decided in the year 1899." The same view has been again explained and followed by the Privy Council in the recent case of *Vajesing Ji* v. *The S. of S. for India in Council.*[3]

Here, however, we must bear in mind, that if even prior to settlement, the Government had in any way chosen to recognise an inam, the argument based on the "act of state" must necessarily fail, because, once the inam had been confirmed, subject to certain terms, the Government had no right to alter or vary them at the time of the Inam Settlement. But, the proof of recognition on the part of the Government, which in most cases must only be by conduct express or implied is always a difficut matter and the burden of it necessarily lies upon the party denying the Government's right to impose the conditions.

1. (1859) 7 M. I. A. 476.
2. (1899) A. C. 572.
3. 48 B. 613.

Further, in every case, there is also the question, how far and by what process, the conditions enunciated by the rules framed by the Government at the time of the Inam Settlement for the guidance of the Inam Commissioner, have become part of the inam title deed. For instance, the rule 5 above referred to contains several conditions. Can it be said, that irrespective of the terms of the particular title deeds, these conditions have become annexed to the inams on the confirmation by the inam commissioner? It might be, that the title deeds are silent about these terms; or they might specifically contain terms which are contrary to or at variance with these: or again, there might be a mere reference to these terms such as "confirmed under rule 5," and no more. The question therefore, whether or not any and if so, what conditions have become incorporated into a given title deed is a matter for determination in each particular case.

Thus, where an inam granted by a Native Government came to be recognised and confirmed by the British Government, *for the first time* by the Inam Commissioner, the title deed granted by him and the entries in the Inam Register assume a special importance and the terms governing the grant subsequent thereto will be only those contained or supposed to be contained in such inam title deed or the Inam Register. The reason of this importance is, as has already been explained, that the title deed in such a case, takes the place of a deed of regrant and evidences the conditions subject to which alone the British Government recognised the Inam.

The Crown Grants Act

(Act XV of 1895)

With regard to grants and conveyances by private persons, we know law has imposed several restrictions. For instance, it was laid down by the Privy Council as early as 1872 in *Tagore* v. *Tagore*,[1] that a conveyance by a Hindu creating an estate unknown to Hindu law, such as an estate tail, will be void. Similarly, we have it under the Transfer of Property Act, that any transfer which will offend the rule against perpetuities or put an absolute restriction (except in the case of a married woman or of a lessee) on the power of alienation of the transferree will be bad; in the former case, the transaction itself will be void and in the latter case, the transfer will be good, but the restriction will be inoperative. Prior to 1895 there was some doubt as to whether these restrictions and limitations will apply to crown grants as well. And it was to set at rest the doubts regarding the matter that the Crown Grants Act XV of 1895 was passed, Sections 2 and 3 of which run as follows: "Nothing in the Transfer of Property Act 1882 contained shall apply, or be deemed ever to have applied, to any grant or other transfer of land or of any interest therein heretofore made by or hereafter to be made by or on behalf of Her Majesty the Queen Empress, her heirs or successors, or or on behalf of the Secretary of State for India in Council, to or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed. "All provisions, restrictions, conditions, and limitations ever contained in

1. 18 W. R. 359 P. C.

any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the legislature to the contrary notwithstanding."

The legal position therefore is, the crown can create an estate unknown to any law, and impose thereon any restrictions it pleases notwithstanding the provisions of any law statutory or otherwise to the contrary.

Though the legal position above set forth is clear, it is always a difficult matter in every case to determine, what the actual restrictions and limitations are, and what their true import is. For instance, in two recent Madras cases,[1] the question arose regarding the effect of the provision "alienation is prohibited" found in rule 5 of the Inam Rules dealing with personal inams referred to above. The contention on the one side was, that a Crown Grant should always be construed strictly and that the effect of the clause was to make an alienation effected contrary to the provision not merely voidable, but absolutely void. For this contention, strong reliance was placed on the language of the Crown Grants Act Section 3 which says "......shall be valid and take effect according to their tenor......" The contention on the other side was, that all that the Crown Grants Act did was to declare that the crown will be at liberty to impose any restrictions whatever on a grant made by it, that it had therefore nothing to do with the effect of contravening a restriction in the grant and that as in the

1. *Venkatrama Iyer* v. *Chandrasekara Iyer*, 44 M. 624 and A. S. 351 of 1923; since reported *Vythinatha Aiyar* v. *Yogambal Ammal*, 51 M.L.J. 695.

case of leases and other transfers between private parties, the breach of the covenant, so to say, not to alienate the property, merely gave the Government on such alienation a right to re-enter or forfeit the estate, which it might or might not exercise and that the alienation could only be said to be voidable but not void.

Their Lordships Sadasiva Iyer and Trotter JJ. in the former of the 2 cases and their Lordships Spencer and Ramesam JJ. in the latter, accepted the second contention and held that an alienation made contrary to the above provision, at the worst rendered the alienation merely voidable and that none except the Government could take advantage of the same.

Enfranchisement.

As we have already indicated, enfranchisement is nothing but the Crown giving up its reversionary right in regard to an inam on condition of the inamdar agreeing to pay an annual quit rent or otherwise. The general effect of the enfranchisement is clearly brought out by the preamble to the Enfranchised Inams Act IV of 1862 which runs as follows: "............ And whereas under the Inam rules sanctioned by the Government under date the 9th August 1859, the reversionary rights of the Government are surrendered to the Inamdars in consideration of an equivalent annual quit rent and the *Inam lands are thus enfranchised and placed in the same position as other descriptions of landed property in regard to their future succession and transmission ; it is hereby enacted as follows* :—So then, on enfranchisement, an inam land becomes ordinary transferable and heritable

property free from any of the restrictions to which it was subject prior to such enfranchisement.

However, the more difficult question which has arisen in connection with this subject is, " Does enfranchisement amount to a resumption and regrant and if so, in what cases?" The effect of the numerous cases, so far decided, regarding this question may be generally stated thus : In the case of *personal inams* there is no resumption and regrant; and the Government having merely given up its reversionary right, the inam continues to enure for the benefit of all those who. were interested in it prior to the enfranchisement; or in other words, enfranchisement disannexes the inam from the service but does not affect the rights of persons who are entitled to the same. In the case of *Service inams* on the other hand, as for instance a *Karnam* or a *maniam* service inam, enfranchisement does amount to a resumption and regrant; for, the moment the Government choses to sever the office from the inam, the inam is entirely at the disposal of the Government and the person in whose favour the enfranchisement is made takes it absolutely *persona designata* and another cannot make any claim to it, even though he (the latter) might have held the office at the time of the enfranchisement, and he might have got the inam enfranchised in his favour, had he shown the Government he had a preferential right or claim in that behalf.

One of the earliest cases with which we may begin our discussion in regard to this question is *Srinivasa Iyar v. Lakshmamma.*[1] There, a hereditary village officer who

1. 7 M. 206.

had been dismissed sued to recover lands which had formerly been the emoluments of the office, and which had been enfranchised and granted to another person holding the office at the time of the enfranchisement. It was held, that such a suit would not lie. In delivering the judgment, Turner C.J. observed as follows: "The lands were attached to the office of the karnam as its emolument: when the appellant was removed from office, he lost his right to the land:......................The circumstance that money may have been expended on the improvements of the land in expectation that the office with its emolument would be continued to the family, would not give the appellant any title to recover the land in the events that have occurred. When he was removed for misconduct, the office and emoluments were conferred on a stranger and with the decision of the revenue authority, we cannot interfere. While the office was held by a stranger, the Government resolved to sever the lands from the office and offer them to the then office-holder for enfranchisement; the holder accepted the offer and became the owner."

The next case was *Badha* v. *Hussa Bai*[1] reported in the same volume in which a member of the family of an office holder who had never held the office sued to recover a share of the lands which had been enfranchised in the name of the defendant, another member of the family. There also, a similar view was taken and the same learned Chief Justice put the point thus "The land was appurtenant to the office and the Government determined to sever it from the office and to allow the

1. 7 M. 235.

office holder or the office holders for the time being to enfranchise it. The appellant who was never the holder of the office could not have a claim on its emoluments."

That, this was the law in Madras, was again clearly laid *down by a Full Bench consisting* of Turner C.J. Muthuswami Iyer, and Hutchins JJ.—the last of them dissenting, in *Venkata* v. *Rama.*[1] There again the contention was put forward, that the plaintiff as being the member of the family in which the office had formerly continued, had some sort of hereditary right to the inam attached to the office and that in spite of the fact that some one else had been appointed to the office and the lands were enfranchised in his name, the former could sue to recover the lands. This contention was negatived and the matter was crisply put in the two following passages by Turner C.J. and Muthusami Iyer J. "When the emoluments consisted of land, the land did not become the family property of the person appointed to the office, whether in virtue of a hereditary claim to the office or otherwise. It was an appenage to the office inalienable by the office holder and designed to be the emolument of the officer into whose hands soever the office might pass. If the revenue authorities thought fit to disregard the claim of a person who asserted a hereditary right to the office and conferred it on a stranger, the person entitled to the office at once became entitled to the lands which constituted its emolument."[2] "According to the law, therefore, as it stood prior to the enfranchisement of the inam, a right to the land could

1. 8 M. 249.
2. Per Turner, C.J.

only be legally acquired through the right to the possession of the office and neither the respondent's father nor the respondent had then any vested interest in the office to sustain an action in the nature of an ejectment."[1]

Subsequently, with one exception about to be noted, all the cases[2] up to 1899 follwed the Full Bench ruling.

The difficulty, however, which arose in later decisions sprang from the case of *Narayana* v. *Chengalamma.*[3] But it must at once be observed, that, that was a case of a palayam service inam. And as has been pointed out by their Lordships of the Judicial Committee in the case *Venkata Jagannatha* v. *Veera Badrayya*,[4] which finally set at rest the conflict, the error into which some of the later cases fell was in treating these two separate classes (of personal and service inams) as governed by anological principles. Their Lordships in *Narayana* v. *Chengalamma*, dealing with a palayam inam were perfectly justified in holding that "the enfranchisement had no larger operation than as a release granted by the crown in respect of its reversionary interest and of the obligation of rendering service." However, in *Gunnaiyam* v. *Kamakshi Iyer*,[5] Bashyam Iyangar J. applied the law laid down as to palayams as the "law bearing on the enfranchisement of inams whether they be personal

1. Per Muthusami Iyer, J.

2. *Venkatrayadu* v. *Venkatramayya*, 15 M. 284; *Durgamma* v. *Virrazu* 21 M. 47; *Salemma* v. *Latchman Reddi*, 21 M. 100; *and Subbaraya Mudali* v. *Ramu Chetty*, 23 M. 47.

3. 10 M. 1.

4. 44 M. 643.

5. 26 M. 339.

inams or service inams." The only difference said the learned judge between the two cases is "that in the former (palayam) the office itself was abolished as unnecessary, whereas in the present case (karnam) the office was retained as office, a fixed salary being attached thereto in lieu of the inam. This, of course, can make no distinction in principle."[1] Following this case, another Full Bench in *Pingala Lakshmipathi* v. *Chalamayya*,[2] overruled the earlier F. B. in 8 Madras and held that the law laid down in 26 M. 339 was the correct one. And *Pyrappa* v. *Syama Rao*,[3] *Venkatasubba Rao* v *Venkatramayya*,[7] *Ramayya* v. *Jagannathan*,[4] and *Venkatasubba Rao* v. *Satyanarayana*,[5] more or less followed the ruling in the above case and held that on the enfranchisement of a karnam inam, the inam lands became part of the family property and enured, therefore, for the benefit of all the members of the family.

Finally, the matter came up before the Privy Council in *Venkata Jagannatha* v. *Veera Badrayya*.[6] Their Lordships, after carefully examining all the earlier authorities on the subject, came to the conclusion that the later Full Bench in 30 Madras was wrong and laid down the following propositions as the result of their examination :

1. The lands comprising the emoluments of a karnam were attached to the office held by him as such.

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1. At p. 350.
2. 30 M. 434.
3. (1913) M. W. N. 449.
4. 10 L. W. 422.
5. 39 M. 930.
6. 12 L. W. 642.
7. 44 M. 643.

2. When the karnam for the time being was removed from office, he lost all right and title to the lands.

3. Although in point of fact there might be even a long continuance of the office in a particular family, the right of the government and the decision of the revenue authorities to remove the karnam from office and to appoint another, were not open to question in Courts of law.

4. If this right of selection be exercised in favour of a stranger, there being, for example, within the range of the family (which had been accustomed to have one of its members holding the office of village accountant) no person who in the opinion of the revenue officer was suitable for the position, then, the appointment went to the stranger selected and the lands with it as emoluments, without any claim thereon as a family right by relatives of former holders of the office.

They also held, that when karnam lands are enfranchised under the Inam rules, the enfranchisement is to the office holder himself and does not enure for the benefit of his family; and that in this respect, karnam lands, which are service Inams, differ from palayam lands which are now merely personal inams; for, when a palayam was abolished in so far as the duty of rendering military service was concerned, the estate was continued with all its hereditary incidents to the poligar like an ordinary Zamindari, but in the case of karnams, the lands follow the office.

In *Venkatramadas* v. *Govarraju*,[1] the karnam ser-

1. 43 M. L. J. 153.

vice lands were enfranchised in the name of the widow of the last male holder and it was held following the Privy Council case that she took it as her absolute property and her husband's reversionaries had no claim to it. The case of *Gouri Kantam* v. *Ramamurthi*,[1] has also followed the Privy Council.

The recent case of *Ramakrishnayya* v. *Pitchayya*,[2] however, has gone one step further and deserves our attention. There, while the office of karnam was being held by A, the authorities enfanchised the inam in favour of a stranger B, and issued the title deed in the name of the latter. The question arose if A could claim to recover the property from B on the ground that the right to the lands lay in him as the office holder for the time being and that the enfranchisement could confer no right on the stranger. It was held by their Lordships Phillips and Odgers JJ., following the earlier cases including the Privy Council case and an unreported case S. A. 287 and 288 of 1921 to which Odgers J. was a party, that, enfranchisement in the case of service inams being in effect a resumption and regrant, the stranger got a valid title to the property, unless an intention is made out on the part of the Government to confer the benefit on the office holder, and that there being no evidence of such intention, A could not sustain his claim. The ratio *decidendi* of this case probably requires notice.

The case of *Venkatrao* v. *Mango Rao*[3] belongs to the same type but even much stronger on the facts.

1. 46 M. L. J. 482.
2. 48 M. L. J. 500.
3. (1925) M.W.N. 808.

There, not only was the plaintiff the office holder at the time of the enfranchisement, but he had obtained a decree for possession of the inam lands. But, the authorities refused to enfranchise the lands in his favour and issued a patta in favour of the defendant. It was held that the Government was entitled to overlook the claim of the plaintiff and grant the land to the defendant and that the decree of the plaintiff did not affect the matter. It was also held that subsequent execution of the decree could not put the plaintiff on any higher footing.

We saw in the 8 Madras case that Justice Muthusami Iyer gave his reasons for the judgment to be that "according to the law.........a right to the land could only be legally acquired through the right to the possession of the office and neither the respondent's father nor the respondent had then any vested interest in the office to sustain an action in the nature of an ejectment." Similarly, there is an observation in the judgment of their Lordships of the Privy Council in 44 Madras that "when the karnam lands are enfranchised, the enfranchisement is to the office holder himself and does not enure for the benefit of his family." These observations may at first seem to indicate, that the possession of the office at the time of enfranchisement is sufficient to give the office holder a right to have the property enfranchised in his name. But a little scrutiny will reveal to us, that such was not and could not have been the intention of their Lordships. The correct legal position is, the moment the inam is disannexed from the office, and money payment substituted for the former, the inam is entirely at the disposal of the

Government; and the Government is at liberty to confer it on any person, though usually, and for good reasons, it is conferred on the holder of the office for the time being. The determining factors therefore, in every case are, in whose favour is the deed issued '? and 'what is the intention of the Government in issuing the deed?'

If as a matter of fact, it can be shown in a particular case that the Government while intending to benefit one person, by mistake issued the deed in favour of another, the court may give relief to the person who was really intended to be profited by the Government.[1] Except in such cases, it is not open to any one to contend, though he might have been the holder of the office at the time of the enfranchisement, that the Government was bound to enfranchise it in his favour and that the enfranchisement in favour of a stranger could be of no legal effect.

It seems, it was only with a view to avoid any construction of resumption and regrant implying also a freedom from service, that in the case of inams given for religious or charitable objects such as for the temples or mosques or for services therein, the Government decided not to enfranchise them but simply to continue them to their then incumbents and successors on their existing terms.[2]

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1. *Lakshmi Narasimham* v. *Venkatratnayamma*, 30 M.L.T. 334.

2. The Inam rules do not contain any provisions regarding the enfranchisement of *religious or charitable inams*, probably because, the Government did not contemplate any enfranchisement in such cases. But the question may arise as to what is the position, when rightly or wrongly, the Government chooses to enfranchise a *religious* or a *charitable* inam. Is there, in such a case, a change of tenure merely, or is there any change of ownership as well? The proper answer seems to be that there is a change of tenure

In the case of personal Inams, however, there is merely a change of tenure and not of ownership and the rule laid down in *Narayana* v. *Chengalanna*[1] and the observations in *Gunnaiyan* v. *Kamakshi Iyer*[2] will apply.

Effect on Prior Alienations.

Section 5 of Act III of 1895—*The Hereditary Village Officers Act*—which repeals and practically reproduces s. 2 of the old Regulation VI of 1831 provides, that inams which are being enjoyed as emoluments for village services and in the Schedule Districts for any revenue or police services 'are not liable to be transferred or encumbered in any manner whatsoever and that it shall not be lawful for any court to attach or sell the same.' In other words, that section absolutely prohibits the alienation of the properties granted in inam for the performance of

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merely; for, though a *religious* or a *charitable inam* is as much a public service inam as a *kernam inam*, it will be wrong to suppose, that in regard to enfranchisement, the former stands on the same footing as the latter. The one ground on which it has been held, that in the case of a *kernam inam*, for instance, enfranchisement amounts to a resumption and regrant is, that the Government is at any moment, entitled to disannex the inam from the office and substitute a money payment, or even to abolish the office and resume the inam without giving any reason whatever. When we come to a *religious* or a *charitable inam*, however, the position is distinctly otherwise. so long as the services continue to be performed according to the terms of the grant and the institution concerned is maintained in an efficient state, the Government has no right to interfere with the inam. It naturally follows, that when no case for resumption has arisen, enfranchisement by the Government, which means no more than the Government giving up its reversionary right, cannot in any manner affect the ownership of the inam. This view receives considerable support from the recent case of *Punniah* v. *Kolamma* reported in 40 M. 939. That was the case of a chartitable inam.

1. 10 M. 1.
2. 26 M. 339.

village services in general and for the performance of any Revenue or police duties in the Scheduled Districts. The question has often arisen "what is the effect of an alienation contrary to the above provision followed by an enfranchisement of the properties in favour of the alienor?" In one of the early cases,[1] it was successfully argued that on the principle of 'feeding of the grant by estoppel' enunciated by Section 43 of the Transfer of Property Act, the effect of subsequent enfranchisement was to make the property available for the alienee, although at the inception, by reason of the legal prohibition, nothing passed to him under the conveyance. But this view was almost consistently dissented from in the later cases.[2] Those cases held, that under the statute, the alienation of the service inams mentioned therein was absolutely void and that though the inam was at a later date enfranchised, the alienee could not invoke Section 43 of the Transfer of Property Act, because, there is no estoppel against a statute. However, with a view to settle the conflict on this matter, the question was referred to a Full Bench in *Sannamma* v. *Radha Bhayi*.[3] Their Lordships after a careful consideration of all the earlier authorities on the point came to the conclusion, that the view taken in 18 M.L.J. 247 was wrong and that the law was correctly laid down by the later decisions. As a matter of fact, in the last mentioned case, the alienation was subsequent to enfranchisement

1. *Anganayya* v. *Narasamma*, 18 M.L.J. 247.
2. *Narahari* v. *Korithan Naidu*, 24 M.L.J. 462; *Batchu Ramayya* v. *Dhara Satchi*, 25 M.L.J. 635; and *Ramayya* v. *Jaganatham*, 39 M. 930.
3. 41 M. 418—34 M.L.J. 17.

but prior to the notification mentioned in Section 17 of Act II of 1894 which provided, that the enfranchisement may take effect "from such date as the Government may notify." It was held, that till the notification was actually made, the lands continued subject to the prohibition against alienation, that the alienation in question was therefore absolutely void as being in contravention of the Statute and that therefore Section 43 of the Transfer of Property Act could not be invoked by the alienee subsequent to such notification. The case of *Gopala Dasu* v. *Rami*[1], which does not seem to have been cited before the Full Bench had also adopted the view of the later cases and held that subsequent enfranchisement will not help the alienee of a village service inam contrary to the provisions of section 5.

The view of the Full Bench also receives support from the decision of the Privy Council in *Padappa* v. *Srinivas*[2], which is a case relating to *Vatan* tenure in the Presidency of Bombay.

Though the above cases are all cases of village service inams, yet the principle laid down by them will apply to all cases of service inam whose alienation is prohibited in law, on the ground of public policy or otherwise as pointed out in the Full Bench Case of *Anjaneyalu* v. *The Rajagopala Rice Mill.*[3]

The recent case of *Somasundaram* v. *Kondayya*,[4] is somewhat peculiar and deserves our notice. There P the owner of an unenfranchised inam mortgaged it to A.

1. 40 M. 946.
2. 24 B 556 P.C.
3. 45 M. 620 F. B.
4. 49 M.L.J. 401.

The inam was subsequently sold in execution of a decree obtained against P and was purchased by plaintiff's vendor. At the time of the purchase, the inam was still unenfranchised. It was subsequently enfranchised and after enfranchisement plaintiffs' vendor sold it to plaintiff. A suit was brought by the plaintiff to redeem the mortgage in favour of K, and the latter pleaded that the property was inalienable on the date of the Court Sale at which the plaintiff's vendor purchased and that therefore neither the plaintiff's vendor nor the plaintiff had any right to redeem the mortgage. It was held, without determining the question of inalienability, that in as much as P was aware of the execution proceedings and stood by without raising any objection to the sale taking place, he was precluded from raising that objection in the suit, by virtue of the provisions of the Civil Procedure Code. But it must be noted, that the correct legal position being that the alienation of service inams is prohibited solely on the ground of public policy, enunciated in s. 6 of the T. P. Act as well as in s. 5 of the Hereditary Village Officers Act, it is rather difficult to understand, how there could be any estoppel against the statute so as to prevent one from raising the plea of inalienability. In fact, as two eminent judges of our High Court have pointed out in 28 M. 84, the effect of the legal prohibition against alienation is to render the order of the court for sale *ultra-vires* or in other words to render such order absolutely nugatory. In spite of the fact, therefore, that their Lordships in 49 M. L. J. 401, have relied upon a number of earlier decisions both of our High Court and of other High

Courts, it seems, that the case may probably require reconsideration.

Alienation of unenfranchised Inams

In considering the inalienability or otherwise of unenfranchised inams—there can be no question of inalienability as regards enfranchised inams—we must bear in mind the distinction between personal inams and service Inams.

A personal Inam as we have already seen, is personal to the grantee and is free from the obligation of any service. On the other hand, a service inam is one burdened with service. But, this again may be either private service inam or public service inam—the former being one in which the inamdar is bound to render certain services personal to the grantor and the latter being one in which he is bound to render certain public services. However, for the purpose of our discussion, we may leave alone a private service inam, because, that is governed purely by the terms of the grant which created and confirmed it and should be decided with sole reference thereto.

As regards personal inams, such as *Bhattavritti* or *Srothriam,* inams, we find that most of them were confirmed by the inam commissioner at the time of the Inam Settlement under rules 4 and 5 of the Inam rules framed by the Local Government. Rule 5 runs as follows :

If the present incumbent is a descendant of the original grantee or of the original registered holder, the inam will be continued to him hereditarily, subject to the

existing conditions of the tenure as they have been interpreted by the Government. That is to say :—

1st : succession is limited to direct lineal heirs and undivided brothers

2nd : the inam escheats to Government on failure of such heirs.

3rd : *Alienation of the inam is prohibited.*

4th : Adoption except out of the family of an undivided brother or cousin is not recognised.

The question arose in a number of cases regarding the true import of the prohibition against alienation mentioned in clause (3); and as has already been pointed out, the decisions have taken the view, that the prohibition in clause (3) will not make an alienation absolutely void, but merely voidable at the instance of the Government.[1] And it seems, that even the question as to how far the prohibition can be read into a grant which is said to be simply "confirmed under rule 5" without any particular reference to any of the clauses is also a doubtful matter. There is also the further question regarding the effect of Regulation XXXI of 1802 now repealed, which declared that inams granted prior to certain dates mentioned therein, should be deemed valid. If even apart from the proceedings of the Inam Commission, the inams mentioned in the regulation had been once validated and recognised by the Government, there could be no right in the Government to add to or subtract from the terms of the original grant thereafter. The result will therefore be, that such grants though purported to be confirmed

1. *Venkatarama Iyer* v. *Chandrasekara Iyer*, and A. S. 351 of 1923.

under rule 5, will be governed not by the terms of the inam rules, but by the terms of the original grant. If for instance the original grant was "in perpetuity, from son to grand-son and from generation to generation, with powers of gift sale etc," it will be really difficult to argue that the prohibition against alienation mentioned in rule 5 should apply.

The case of *palayams* which are now purely personal inams, however, stand upon a separate footing. It is now well settled by a series of decisions beginning with the *Marungapuri case*[1] and ending with the case of *Malayandi Appasami Naicker v. the Midnapore Zamindary Co. Ltd.*[2], that since the abolition of the military service in the early part of the last century, palayam inams have been converted into pure and simple personal inams and that they are freely alienable as any ordinary Zamindary property in the presidency.

Coming to public services inams, we have already seen that certain inams are specifically declared inalienable by statute. Under section 5 of Act III of 1895, already referred to, village service inams throughout the Presidency and any revenue or police service inams in the scheduled districts are inalienable and any alienation contrary to the provisions of the Act is absolutely null and void. As regards other kinds of service inams, it has been held that in our country even apart from any statute, they are inalienable and the alienation will be bad on ground of public policy.[3] But, even among the cases that have

1. I. A. 282 P. C.
2. 44 M. 575 P. C.
3. See Mayne's Hindu Law para 338, and the cases cited thereunder.

taken the above view, there is a conflict of opinion as regards how far the alienation is bad. Some of the earlier cases seemed to take the view, that the alienations are not *void abinitio*, but are good for the life of the alienor or at any rate for the period during which the services continue to be rendered by him, though of course, the alienations cannot prevail as against the Government, so as to prevent its exercise of the right to resume the inams on the ground of alienation.[1] But, the question is now fairly settled by the decision of a Full Bench in *Anjaneyalu* v. *Rajagopal Rice Mill Ltd.*,[2] that such alienations are not merely voidable, but void *ab initio* and that they cannot be good, even for the life of the alienor. In that case, certain lands held on *swastivachakam service* tenure were sought to be attached and sold in execution of a decree obtained against the inamdar. Their Lordships held, after reviewing the earlier authorities and distinguishing some of them, that the alienation of such an inam being opposed to public policy and the nature of the interest created by the grant, would be totally void and that therefore the court could not order a sale of the property. Referring to the further question, whether the property could not be sold at least for the life of the inamdar, the learned C.J. observed as follows; "Now the question whether or not the inamdar could alienate his land during his life time while he rendered services does not really arise directly

1. *Pakyam Pillai* v. *Seetharama Vadhyar*, 14 M.L.J. 134; *Papaya* v. *Ramana*, 7 M. 85; *Lotlikar* v. *Wagle*, 6 B. 596; *Minakshi Sundaram* v *Chokkalinga Boyar*, 15 M.L.J. 10, and *Vusa Chandrakantam* v. *Vusa Subba Rayadu*, 1914 M.W.N. 745.

2. 45 M. 620.

here because the present application is for sale of land out and out; but as the execution creditor would have a right, if such land is alienable for such period, to sell for that period, if he could do so, I think it right that I should express my views on that subject. Those cases may be distinguishable; *Midnapore Zamindary Company* v. *Appasami Naicker*[1] on the ground that it was a different kind of inam: *Vusa Chandra Kantam* v. *Vusa Subbarayadu*[2] on the ground that it means that the inamdar can let the property during the time that he is rendering the services. If that is the meaning, I should find nothing objectionable in those decisions; for I can see nothing contrary to the interest of the inamdar and nothing contrary to the public policy in the letting by the inamdar of the land, so that, although the land is cultivated by some one else, he provides for himself what was intended he should have, namely, a subsistence out of the land. This he would get in the shape of rent which answers the purpose just as well as obtaining profits from the actual cultivation of the land. But if those cases mean that he can sell out and out for the period of time during which he lives and renders services, I do not agree with them because such alienation would in my view be quite contrary to public policy for the reasons I have already given."[3]

The ground of public policy on which the decision is based is explained by the learned judges as follows: If such out and out alienations are not prohibited in law, "then the result might be attained, that the inamdar

1. 41 M. 749.
2. 16 M.L.T. 347.
3. at p. 626.

would have left upon his hands the burden of the service without continuing to enjoy the revenue of the property which was provided to keep him in sufficient comfort to be able to perform the services for which it was granted." However, a case[1] decided subsequent to the Full Bench held that the sale of a service inam was not void *ab initio* and that it is good so long as the alienor is alive and continues to render services, but only the vendee cannot assert a title either against the Government or against the successor in office of the alienor. Evidently, the Full Bench ruling was not brought to the notice of his Lordship in that case and the case cannot therefore be considered to lay down good law. In fact, His Lordship Justice Devadoss who decided that case has definitely followed the Full Bench in a later case and held that though it is legal for the inamdar to alienate the lands temporarily by way of lease, for a period, yet he cannot effect a valid sale of the property.[2]

Now, therefore, one thing may be taken as settled namely, that an out-and-out sale, whether absolutely or for life, is void and is unenforceable. It may also be taken as settled that a lease for a term will not be void because, there is nothing against public policy in an inamdar creating a lease and providing for himself a subsistence out of land by way of rent.[3] The validity of mortgages may probably be questioned. But, some of the cases already referred to seem to have definitely

1. *Venkanna* v. *Chinna Appalasami*, 48 M.L.J. 217.
2. *Baswayya Naidu* v. *Munisami Reddi* 86 I.C. 1041.
3. See also *Venkatasubbiah* v. *Murugula Sheik*, 19 M.L.T. 144=3 L.W. 485.

proceeded on the footting that alienations by way of mortgage are not void. For instance, in the 86 Indian cases 1041, the appellant before the High Court who disputed the claim of the plaintiff-purchaser of the inam lands, was himself a mortgagee of the inam lands from defendants 2 to 4; and if really the mortgage in favour of the appellant was void, it is rather difficult to see how, he could maintain the appeal. Any objection to the maintainability of the appeal, could probably have been answered by saying, he was a person in possession of the properties. But, be that as it may, there is not even an observation in the case to throw doubt on the validity of the mortgage. The facts of *Somasundaram* v. *Kondayya*[1] which we have already referred to are also similar. The case in 15 M.L.J. 10[2] is however a more direct case. There it was held, that the mortgagee of a service inam cannot after the death of the service-holder who granted the mortgage proceed to recover his debt by sale of the service holding in the hands of the successor, even though the latter may be the son of the mortgagor. The case therefore seems to say that a mortgage may be good for the life of the mortgagor, provided of course he continues to render the services. But, in view of the observations in the Full Bench case, it is more than doubtful whether a mortgage, at any rate, an usufructary mortgage, depriving the inamdar of all use of the property, will be good under the law.

Whatever may the law in regard to alienations, it has been held that in cases where an endowment

1. 49 M.L.J. 401.
2. *Minakshi Sundaram* v. *Chokkalinga Rayer*.

is made to be enjoyed by the grantee and his heirs, subject to the performance of certain services, there is no objection to the properties being partitioned among the several heirs who are bound to carry on the trust, though the office itself will remian joint and the co-heirs will form the co-trustees of the endowment.[1]

Assuming that in a particular case the inam is inalienable, it must be borne in mind that the prohibition against alienation will apply only when the inam is sought to be alienated by or on behalf of the inamdar, so that a trespasser may well acquire title to the property by prescription even before enfranchisement.[2] In *Danushkoti Rayadu* v. *Venkatrathnam*,[3] which was the case of a karnam service inam it was contended that the lands attached to the office of the karnam must be regarded as emoluments of the office, that they could never cease to be as such and that the rules of limitation have no application thereto. That contention was however, negatived and held following *Gnana Sambandha Pandara Sannadi* v. *Velu Pandaram*,[4] and *Neelachalam Kama Raju*,[5] that a person in adverse possession of lands

1. *Ranganathan Chetty* v. *Murugappa Chetty*, 27 M. 192 at 199 A case of a Hindu temple; confirmed by p. c. in 29 M. 283 and referred to and followed in *Sethurama Samiar* v. *Mera Swamiar*, 34 M. 470 at 478 and *Mahalakshmi* v. *Somasundaram*, 44 M 205, *Mahammed Hussain Sahib* v. *Mahammed Abdul Rahim Beg Sahib*, 42 M.L.J. 272. The last was case of a masjid inam; there it was held that *temporary* division for convenience of management is not invalid. What about permanent division? See also the cases cited in 27 M. 192.)

2. *Lakshmipathi* v. *Narasimham*, 1916 1 M.W.N. 473.

3. 38 M.L.J. 320.

4. 23 M. 271 P.C.

5. 14 M.L.J. 438.

annexed to the office of karnam for over the statutory period acquires a prescriptive title to the lands as against the holder of the office and his successors. The same view has since been taken by another bench of our High Court in *Majawath Ali* v. *Mujafar Ali*.[1]

Resumption

To 'resume' is to 'take back' and 'resumption' simply means, the taking back of the thing granted; and, what is resumed cannot in any case be more than what has been granted. So then, when an inam consists of the land revenue or the melwaram alone, the resumption can be only with respect to such land-revenue or melwaram.[2] Where, on the other hand, the inam consists both of the land and the land revenue, the resumption may be with respect to the land or the land-revenue alone or with respect to both. But as has been pointed out in a recent Patna case,[3] the policy of the Government, even in cases when the grant consists of both the warams, has been, simply to resume the land revenue by levying the full assessment, leaving the land as it is for the benefit of the inamdar; in other words, even in cases where the land itself could be resumed, the Government is content with levying the full assessment, because, even after resumption, it must necessarily grant the land to some one, and there is no reason why the original holder himself should not have the benefit of the land provided he is willing to pay the full assessment and is not otherwise disqualified or guilty of misconduct.

1. 45 M.L.J. 791. This was a case of Kaji inam. See also *Lakshmipathi* v. *Narasimham*, (1916) 1 M.W.N. 473.
2. *Iduballi* v. *Sri Rajah Visvesvara*, 18 M.L.T. 142=30 I.C. 416.
3. *Mahant* v. *Lalchand*, 1 Pat. 475.

However, in some cases, the question of partial or total resumption becomes important by reason of the legal consequences that flow from it. For instance, if in the case of an inam consisting of both the warams, granted in favour of a religious or charitable institution, the melwaram alone is resumed and regranted in favour of a particular individual, that which passes to that individual will only be the right to receive the melwaram and the kudivaram right in the land will continue to enure for the benefit of the institution. If, on the other hand, the whole inam is resumed and regranted, the grantee will get an absolute interest in the property, freed from any right which the institution might have had in the lands. In the one case, therefore, there will be a complete conversion of the inam property into ordinary property, while in the other, the portion unresumed will still continue to be inam property, with the result, that in the latter case, the services, if any, renderable in respect of the inam should continue to be rendered.[1]

Distinction between Resumption and Enfranchisement

There are certain essential distinctions between resumption and enfranchisement which may be noted. Resumption puts an end to all existing rights in respect of the thing resumed and vests them in the person resuming the same; so that, on regrant, the grantee will osdinarily get an absolute title tothe property, free from any rights which might have subsisted formerly. This is

1. *Md. Esuf Sahib v. Moulvi Abdul Sathur Sahib*, 42 M. 161.

in fact the essential distinction between resumption and enfranchisement. In the case of enfranchisement, except in regard to certain service inams, there is a change of tenure merely, not of ownership. Consequently, one is at liberty to prove one's title to the enfranchised property though the enfranchisement might have been made in favour of another. In the case of resumption, however, there being no question of prior title, the terms of the regrant alone will determine the right to the property.

Also, when, an inam is resumed, generally, full assessment is levied upon the land and it is converted into ordinary heritable and transferable property. In the case of enfranchisement, however, as we have already seen, in most cases, only a quit rent or a partial assessment is levied, though here also, there is a conversion of the inam property into ordinary heritable and transferable property.

Lastly, once the right to resume a particular inam is made out, the Government or the Zamindar, as the case may be, is at liberty to resume the inam without any reference to the wish of the inamdar. But in the case of enfranchisement, though the rules state that the Government will be willing to enfranchise the inams on certain conditions, no inamdar can claim enfranchisement as of right; nor can the Government compel an inamdar, except in a few specified cases, to get his inam enfranchised. In other words, where consent of the grantee is generally necessary for the purpose of enfranchisement, no consent at all is necessary for resumption.

1. Referred to in rule 7 of the Inam rules. See B.S.O. Vol. II pp. 295, 296.

Who can resume

The avowed policy of the British Government in the early part of the last century was to secure to themselves the exclusive right of superintendence including the right of resumption in regard to all public service Inams. It was with a view to effectuate such a policy that sections 4 and 12 of Regulation XXV of 1802 were enacted. Section 4, as we have more than once seen, declared, that the peskush to be fixed in the case of every zamindary was to be exclusive *interalia* of the revenue derivable from *Lakhiraj* lands or lands exempt from the payment of land revenue; and Section 12 provided that no proprietor should be competent to appropriate any part of his estate permanently assessed, to religious or charitable purposes, so as to exempt it from the payment of revenue; nor should he be competent to resume or reassess any of the lands already appropriated for such purposes. Obviously, even in Section 4, the government contemplated the exclusion not of the inams intended for the personal service of the zamindar, but only those devoted for public purposes. If the provisions of these sections had been strictly adhered to, there could be no pre-settlement public service inam at the present day in regard to which the right of resumption will vest in a zamindar. But due to several causes, both historical and legal, such adherence was imposible, with the result, that though in respect of most of the public service inams the right vests only in the Government, in respect of some, it vests in zamindars or occasionally, even in village communities. Whenever, therefore, a conflict arises between a zamindar and the Government

in the matter of the right to resume, the Court has necessarily to go into the question whether or not the revenue derivable from the inam under consideration was included in the assets of the Zamindary at the time of the settlement. If it is found as a matter of fact, that the revenue was included in settling the peskush, then, the right to resume the inam will be with the zamindar ; otherwise, the Government will have the right. In regard to this matter, however, there seems to be a well founded presumption that where an inam is a public service inam granted prior to Permanent Settlement, the right to resume it *prima facie* vests in the Government, and a zamindar who disputes such right must show that by in advertance or otherwise, the income derivable from the inam lands was actually taken into account at the time of the settlement.[1] As regards post settlement or *dharmila* public service inams, again, we have to refer to Section 12 as well as to Section 13 of Regulation XXV of 1802. Section 12 while prohibiting the creation of new inams provides that, the proprietor may create inams if the consent of the Government has been previously obtained in this behalf ; and Section 13 which is merely a supplement to Section 12 says that where the consent of the Government may have been obtained under the previous Section, the proprietor within whose

1. *Raja Nilmony* v. *Government and Bee Singh*, 18 W.R. 321 ; and *Brojonath* v. *Durgaprasad*, 34 C. 753. *In Natte Sarayya* v. *Vepparathi Vythinathan*, 27 M.L.J. 57 it was held that a temple-dasi inam was a public service inam and the Government alone could resume it on default; similarly in *Chiranjeevi* v. *Manikya Rao*, 27 M.L.J. 179 it was held that an inam granted for the reciting of Vedas in a temple is a public service inam and the Government and not the trustees could therefore resume it.

estate the inam lands are situate shall be obliged to pay the assessment as may be fixed on such lands by the Collector. The effect of these two Sections is to prohibit the proprietor of an estate from creating new public service inams except with the consent of the Government, and in cases where such inams are created, to make the proprietor pay the assessment due on the lands. So then, in the case of inams created subsequent to settlement and in regard to which Section 13 has been complied with the right to resume will naturally vest in the zamindar.[1]

As regards personal or private service inams, the right of resumption *prima facie* vests in the zamindar. But here also, as in the case of public service inams, the main question is whether or not the revenue derivable from the inam lands was included in the assets of the zamindary in fixing the peskush. Once it is found that the income was or was not included, then there will be no difficulty in declaring in whom the right to resume vests. If, however, no direct evidence is forthcoming, the question becomes somewhat difficult. And in this connection a presumption is generally drawn, namely, that in the case of a pre-settlement personal service inam, the Government will, until the contrary is shown, be taken to have included the income derivable from the inam in fixing the peskush. The reason of this presumption is obvious; and that is, when the services are personal to the Zamindar, it is hardly likely that the Government would have excluded the revenue payable in respect of

1. See *Sree Raja Vasireddi* v. *Secretary of State for India in Council*, 37 M.L.J. 661.

the inam lands and deprived themselves of their share in such revenue.[1]

In *Raja Parthasarathi Appa Rao* v. *Secretary of State*[2] their Lordships held that apart from any presumption arising from the nature of the tenure, under 106 of the Evidence Act, the Government having the special means of knowledge in regard to the inclusion or otherwise of the income from an inam, the burden will be upon them to show that in fact the income was excluded. So put, the result will be that even in the case of an inam which is admittedly granted for public service, the burden will be upon the government to show that the income thereof was excluded from the assets of the Zamindary. But, the actual case being one relating to a private Service inam, it is more than doubtful whether their Lordships intended any such result.[3]

There may however be some cases, (whether of public service or of personal service inams) in regard to which the right of resumption vests partly in the Government and partly in the zamindar. For instance, in fixing the peskush, if the quit rent alone which is payable in respect of a particular inam but not the full assessment, thereon has been taken into account, then the right to resume the inam to the extent of levying the quit rent

1. See *Thiruvenkatacharloo* v. *Shaik Altoo Sahib*, 50 M.L.J. 251 at 255 and 256 *Raja Parthasarathi Appa Rao* v. *Secretary of State*, 38 M. 620; *Raja Venkatrangayya* v. *Appal Razu*, 20 M.L.J. 728; *Raja Nilmoni* v. *Rakranath Singh*, 9 I.A. 104 at 121.

2. 38 M. 620.

3. See *Kuppu Reddi* v. *Mandaleeka*, 17 L.W. 712 at 720=44 M.L.J. 91.

will be in the zamindar; but the right to resume the rest will be in the Government.[1]

Briefly put, in regard to a pre-settlement inam, if the revenue derivable from the inam has been included in the *mal* assets of the Zamindary, the right to resume will vest in the Zamindar; otherwise it will vest in the Government. In the case of a *dharmila* inam, if the provisions of Sections 12 and 13 of regulation XXV of 1802 have been complied with, the right will vest in the Zamindar; if, however, the inam is unauthorised and has been created in controvention of the above provisions, the Government will have the right to resume the same whenever it is brought to its notice.[2]

Village service inams such as Karnam or moniem Service inams being admittedly public service inams, the rules so far enunciated with regard to them will necessarily apply. But, with respect to such inams, in particular, there are one or two legislative provisions which we may notice. Section 17 of Act II of 1894[3] provides, that where such inams have been either granted or continued by the State, the Government will have the right to enfranchise them, that is to say, resume and regrant them to whomsoever they like. This they can do even though at the time the Act came into force the

1. See the observations in *Raja Parthasarathi Appa Rao* v. *Secretary of State*, 38 M. 620 at 624.

2. A grant will be contrary to the provisions only when it seeks to exempt the land from payment of the revenue. The Zamindar may at his pleasure without exempting a land from payment of revenue allow it to be held by one rent free or for quit rent. In such a case it is difficult to say that the Government can interfere.

3. The Proprietary Estates village Service Act.

inams might not have been devoted for the purposes for which they were originally granted. The same section further provides, that any land or emoluments from lands granted by a proprietor for the remuneration of village services may be resumed by such proprietor, provided they were being held or enjoyed as such at the time of the passing of the Act. The effect of the last provision is to confine the power of resumption of a Zamindar to cases in which the grants being originally made by him continued to be held or enjoyed for the purposes for which they were originally granted at the time the Act came into force.[1]

Lastly, whoever may be entitled to resume an inam; it must be borne in mind that without the intervention of such person the inam cannot be considered to have been resumed. In one case,[2] it was argued that the religious services for which an inam had been endowed having become unnecessary, the court was entitled to treat the inam as if it was resumed and give directions to the management of the inam lands. But, it was held that the power to resume the inam was with the Government and till the Government interfered, it was not open to the court to treat the inam as having been resumed.[3]

Grounds of Resumption

Before dealing with the grounds on which the Government or a Zamindar may resume an inam, it is

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1. See *Basava Raju* v. *Secretary of State*, 11 L.W. I, 89.
2. *Jakkam Reddi* v. *Subrahmania Aiyar*, 16 L. W. 839.
3. See also *Boyana* v. *Potha Palli*, (1911) 2 M. W. N. 384=12 I. C. 548.

necessary to bear in mind, that cases of resumption by the Government in the exercise of their sovereign power, stand altogether on a separate footing and should not be confused with cases in which resumptions are made under colour of municipal law or legal title. When the Government resumes an inam in the exercise of their sovereign power, the act of the Government becomes an act of state and no municipal court is entitled to go into the justice or legality of the act. But, here it is essential to note that the question of an act of state can arise only in regard to grants made by native rulers or zamindars prior to the assumption of sovereignty by the British Government, and that only so long as the latter have not either expressly or by necessary implication recognised or confirmed those grants; for, as we have already seen, once the Government has chosen to recognise the right of a subject to an inam granted to him or to his predecessor by a former ruler, they cannot go back upon their undertaking and resume the inam arbitrarily; in other words, the confirmation once and for all puts an end to the power of the Government to plead an act of state, because, a contract between the Government and one of its subjects stands on the same footting as a contract between two private individuals and no question of an act of state can possibly arise. The leading case on this part of the subject is *The East India Company* v. *Syed Ali*.[1] There, by a treaty of the 31st of July 1801, made between the then Nawab of Carnatic and the Governor in Council at Madras, the sovereign rights of the Nawab in the Carnatic were vested in the East India Company; and the

1. 7 M. I. A. 555.

question arose whether a resumption by the Madras Government of a Jaghir granted by former Nawabs as Altangah inam, before the date of the treaty, and a regrant by the Madras Government to another for a life estate only could not be questioned by the heirs of the last holder in a Court of law. It was held, that, the act of the Madras Government in resuming the inam being an act of state, the Municipal Courts were precluded from taking cognisance of the suit brought by the heirs. The facts of *Karunakara Menon* v. *The Secretary of State for India*,[1] were similar and a similar view was taken by the Madras High Court.

That when once a grant has been recognised and confirmed by the Government, no act of state could thereafter arise, is illustrated by *Forester* v. *Secretary of State for India*.[2] There, after the sovereignty over the Doab and the territories west of Jamna in which Badshapore was situate had become vested in the British Government by a treaty dated the 30th of December 1803, the British Government resolved to continue their friendly relations with Begum Sumro who was up till then the Jagirdar of the Doab and Badshapore by allowing her to continue as such. The substance of the agreement entered into between the Government and the Begum was that "those places in the Doab which formed the jaidas (jagir) of Z Begum shall remain to her *as before from the Company as long as she may live*." On the death of the Begum the Government resumed the lands and the ques-

1. See also *Jehangir* v. *Secretary of State*, (1903) 6 Bom. L.R. 131 at 196 and "

2. 18 W. R. 349=1 A. Sup. 10.

tion arose if the act of the Government constituted an act of state so as to shut out the jurisdiction of the Civil Courts. Their Lordships of the Privy Council held, that the act of the Government in this case was not the seizure by arbitrary power of territories which up to that time had belonged to another sovereign state; that it was the resumption of lands previously held from the Government under a particular tenure upon the alleged determination of the tenure that therefore the principles applicable to a case like *Kamatchee Bai v. Secretary of State*,[1] could not be applied and a Municipal Court was entitled to go into the question whether a ground for resumption had been made out by the Government in law.

Now, coming to the grounds on which an inam may be resumed, we have to bear in mind the distinction between a grant burdened with service, and a grant which has been made in lieu of wages. A grant burdened with service, is an out and out grant but with the condition super-added, that the grantee shall perform certain services. It is also sometimes described as a grant made partly in consideration of past services and partly in consideration of future services—*pro Servitus impensis et impendendis.*—A grant in lieu of wages, on the other hand, is a grant which is made merely as a substitute for the wages due to the grantee for services to be rendered by him. In the former case, namely a grant burdened with service, it is settled law that the grantor cannot resume the inam, so long as the grantee is able and willing to perform the services. That is to say, even though the services may

1. 7 M. I. A.

no longer be required, the grantor cannot say, that he will remit the services and resume the inam, and the only ground on which he could resume the inam is wilful default on the part of the grantee.[1] In *Forbes* v. *Meer Mahomed*,[2] which is the earliest and the most leading case on the subject, a grant had been made for the performance of certain services—the repelling of incursion by wild elephants—which became obsolete. Thereupon, the Zamindar[3] sought to resume the inam on the ground that the services of the grantee were no longer required. It was found as a matter of fact that the grant was made not merely in lieu of wages but as remuneration for the grantee's past as well as future services. The Judicial Committee held, that under the circumstances, the Zamindar had no right to resume the inam. In so holding, their Lordships observed, "The conclusion which they would draw from the decided cases, as well as from the reason of the thing is that in every case the right to resume must depend in a great measure upon the nature of the particular tenure or the terms of the particular grant. They agree with the observations of Mr. Justice Jackson, (VI W. R. 209) that there is a clear distinction between the grant of an estate burdened with a certain service and the grant of an office the performance of whose duties are remunerated by the use of certain lands.

1. *Forbes* v. *Mear Mahomed*, 13 M.I.A. 438; *Leelanund* v. *Manoranjan*, S.R. 1 I.A. sup. vol. 181 at 185=13 Beng. L.R. 124 at 132; *Venkatanarasimha Apparao* v. *Sobonadri Appa Rao*, 29 M. 52. *Appandora* v. *Sri Raja Veera Badra Raju*, (1911) 2 M.W.N. 406; *Mrityanjeyadu* v. *Raja of Pithapuram*. 30 M.L.J. 132=1916, M.W.N. 132 and. *Thiruvenkata Charloo* v. *Shaik Altoo Sahib*, 50 M.L.J. 255.

2. 13 M.I.A. 438.

3. Strictly speaking, it was the purchaser of the Zamindary.

"They have already stated, that in their opinion, the grant in question does not fall within the latter category.

"Assuming it to be a grant of the former kind, their Lordships do not dispute that it might have been expressed as to make the continued performance of the services a condition to the continuance of the tenure. But, in such a case, either the continued performance of the service would be the whole motive to and consideration for the grant, or the instrument would, by express words declare that, the service ceasing the tenure should determine.

"It appears to their Lordships that neither the first nor the second sunnad is a grant of the kind last mentioned. Each proceeds in part upon the past services of Meer Syed Ally; nor is the consideration, so far as it is unexecuted, wholly the keeping up of a body of men to repel the incursions of the elephants, for the grantees were also to cultivate the waste land. The latter stipulation was probably designed to protect the already cultivated districts of *Pergunnah Sultanpore* by interposing a further belt of cultivation between them and the forest. Hence the grant may be said to have been made *Pro servitus impensis et impendendis*,—Partly as reward for past and partly as an inducement for future services. Again, neither sunnad contains any words which expressly import that the tenure shall cease if and when any of the services cease to be performed. Such a provision is very different from one which merely casts upon the grantee certain duties so long as they are necessary. The former makes the grant determinable

when there is no further occasion for the services. But, in the latter case, if the operation of any natural cause removes the necessity for the services, the grantee will hold the lands practically freed from the condition originally imposed upon him. Their Lordships are, therefore, of opinion that upon the true construction of these sunnads, the grantees, though bound to protect the *purgannah* from the incursions of wild elephants so long as those incursions lasted; and though still bound to do so should, by any chance, those incursions be renewed; and though they may be liable to forfeit the tenure if they wilfully fail in the performance of this duty; are not liable to have their lands resumed because there is no longer any occasion for the performance of this particular service there being now no fear of the depradations of elephants in those cases."[1]

The above passage distills in a short compass practically the whole law relating to the resumability of inams burdened with service.

In the case of a grant made in lieu of wages, the grantor may at any time remit the services and resume the inam. For example, in the case of a monigar or a karnam service inam, the Government is always at liberty to resume the inam either on the ground that the office has been abolished or on the ground that money payment has been substituted for the inam.

Though the principles thus enunciated are fairly clear, yet the difficulty in every case arises in determining whether the grant belongs to the one or the other of the

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1. At pages 464 and 465.

categories; and as has been pointed out in *Mrityanjayadu* v. *Rajah of Pittapuram*,[1] each case must be decided on its own facts.

Next, assuming a grant to be one burdened with service it is not always easy to find out whether or not there has been a wilful default in the performance of services. For instance, in *Maharaja of Jeypore* v. *Rukmini*[2] the grant had been made subject to the payment of a *Kattubadi* and the performance of certain services consisting of the attendance on the Zamindar with 500 pikes at *Desara*. It was held that under the circumstances the *Kattubadi* was the principal matter and the rest was subsidiary and that the refusal to perform the services did not operate to create a forfeiture or give occasion for resumption. Here again, therefore, no hard and fast rule can be laid down irrespective of the circumstances of each case.

From the above discussion one thing is clear, namely, that in determining whether a right to resume an inam has or has not been made out, the fact of the inam being a public or a private service inam is not a very material factor to be taken into account.

Where the inam is a public service inam the Government will *prima facie* have the right to resume it; otherwise, the Zamindar will have it. But, whether the right is in the Government or in the Zamindar, it can be

1. 30 M.L.J. 132. In this case it was held that a clause in the grant that the grantee should be rendering service so as to deserve the patronage of the *diranum* did not show that the grantee should hold the grant at the pleasure of the grantor.

2. 42 M. 589.

exercised only under the circumstances indicated above; and those circumstances depend not upon the grant being private or public, but upon its being one burdened with service or one in lieu of wages. In fact, as has been pointed out by Justice Venkata Subba Rao in the recent case of *Thiruvenkatacharloo* v. *Shaik Altoo Sahib*[1] it is the want of clear perception regarding the scope and importance of the two cross divisions or classifications, that has been responsible for much of the confusion and the looseness of expression which are to be found in some of the decided cases.

The above general rules cover the cases of religious and charitable inams, as they do others. But, by reason of the special treatment accorded to them by the Government at the time of the Inam commission, they require some special study in this connection.

Rule III of the Inam Rules shows that these inams were confirmed to the then holders and successors so long as the institutions were maintained in an efficient state and the services continued to be performed according to the grant.

The rules in the Board' Standing Orders, regarding this matter are embodied in 054 Paragraphs 2 and 3. Paragraph 2 says "Religious and charitable inams may be resumed on the ground that the land in respect of which the title deed was issued has been alienated or otherwise lost to the institution or service to which it once belonged or that the terms of the grant are not observed;" and paragraph 3 says "In cases of abandon-

1. 50 M.L.J. 255.

ment or discontinuance of service, all reasonable endeavours should be made to secure a continuance or revival of religious and charitable institutions and services before proceeding to the resumption of inams attached to them. These rules, no doubt, are not, as pointed out by their Lordships in *Secretary of State* v. *Gulam Mahabool Khan Sahib*[1] rules of law by which Courts are bound, but they may be referred to as being in accordance with the correct principles of law.

The main difficulty which has arisen, in regard to the resumption of religious and charitable inams, is in deciding whether or not there is a failure of services within the terms of the grant or confirmation. In the case above cited, an inam had been granted by the Nawab of the Carnatic in 1775 for the upkeep of a mosque, the performance of services and ceremonies therein and the feeding of travellers and the poor. The inam was confirmed by the British Government 'permanently so long as the Service was performed.' Owing to persistant misappropriation of the income by the grantees' successors and alienations by some of them, of two of the villages included in the inam, one on an usufructuary mortgage for 30 years and the other on a long lease for 12 years, for purposes not binding on the charity, the Government resumed the inam in 1903 and credited the assessment to its general revenues. It was found however, that the mosque was maintained in good repair, and the services and ceremonies were regularly performed though on a smaller scale. The trustee for the time being sued for a declara-

1. 42 M. 673.

tion, that the resumption was invalid and for recovery of possession.

It was held that, (1) on a reasonable construction of the words used in the inam extract, any default in the performance of services of however minor a character would not entitle the Government to resume the grant, but what was contemplated was that if the charity failed altogether or substantially as through the disappearance of the mosque or of the persons who would resort to the institution for prayers etc., or if the charity was entirely discontinued, then the Government will be entitled to resume the grant, (2) that the alienations did not *permanently* deprive the charity of the use of the property, (3) that the charity did not fail altogether, nor was it wholly discontinued and (4) that the Government had therefore no right to resume the inam under the circumstances. The decision in *Sikkanda Rowther* v. *Secretary of State*[1] cited by their Lordships in the above case is to the same effect.

The question whether, even a total alienation of the properties comprising the inam will necessarily entail forfeiture, is not free from doubt. In *Sikkandar Rowthen* v. *Secretary of State*,[2] it was observed by Srinivasa Iyangar J. that " a mere alienation of the trust property may not entail a forfeiture, if the trustees kept the mosque in good repair, put up the lights and kept it as a place fit for worship in the usual manner.'' But, their Lordships in in the 42 Madras case above cited seem to say that that proposition is somewhat wide. It also stands to reason,

1. 8 L. W. 402. 2. 5 L. W. 402.

that the Government should be at liberty to interfere when the properties are absolutely alienated at any rate, for the purpose of securing the properties back to the institution.[1]

Here, it must however be borne in mind, that the above discussion regarding the failure of services has proceeded more or less on the assumption that the Government adhered to the provisions of rule 3 of the Inam rules mentioned above and that it will not be of much use in a case where the Government has deviated from the rule. It will be necessary in each particular case to see on what terms the inam was confirmed or recognised and whether in the light of such terms a ground for resumption has been made out.

For instance, there may be cases in which a grant is made to a person and his heirs personally "to be enjoyed by them" subject to certain services. In such cases, it has been held that the surplus left after defraying the expenses of the trust enures for the benefit of the holders and a non-accountability in respect of the same will not be a ground for resumption. Nor can it be said in such cases, that the Government will be free to resume the inam even on the ground that the services have become unnecessary.[2]

Effect of Resumption

The one obvious effect of resumption of an inam is to put an end to the rights of the grantee and convert the inam property into ordinary heritable and transferable

1. See paragraph 7 O. 54, B. S. O.
2. *Jakkam Reddi* v. *Subramanya Aiyar*, 16 L. W. 839.

property, so that when the property is regranted, the regrantee will take it absolutely free from any rights or liabilities which might have attached to it prior to the grant.

For instance in *Ponniah* v. *Kotamma*,[1] the Government resumed certain lands which were held previously as charitable inam and after imposing an assessment granted a patta in favour of one of the persons who were the trustees prior to resumption. It was held that the representative of another trustee had no right to claim a share in the land as against the trustee to whom the patta was given, because on regrant the latter got an absolute title free from the obligations of trust and the rights if any which the other trustees had.

But, as we saw, even at the outset, where the resumption is partial merely, then the character of the inam will continue unchanged as regards the unresumed portion.[2] Further, as the language in S. 2 of Act VIII of 1868 will show, in no case can resumption affect the rights which persons other than the inamdar might have had or acquired in the inam property independent of the grant. Assuming, for instance, that the grant was merely of the land revenue, a resumption purporting to be not merely of the revenue but also of the land and the issue of a ryotwari patta, cannot certainly destroy the occupancy right which the tenants had or had aquired quite apart from the grant. However, some difficulty has arisen in regard to cases where there having been no occupancy

1. 40 M. 939.
2. *Muhamed Esuf Sahib* v. *Moulvi Abdul Salhur Sahib*, 42 M. 161.

right at the time of the grant it had come to be acquired subsequently. In *Venkatappa* v. *Thirumala Reddi*,[1] an inam was granted in 1800 by a Zamindar in perpetuity. It was not clear whether there were any tenants in the lands at the time of the grant, but it was found that by the year 1860 the tenants had acquired an occupancy right. In 1860 the Inam Commissioner confirmed the inam tax free, for two lives only, on the expiration of which the inam should lapse to the state. On the expiry of the two lives without lineal descendents, the Government resumed the inam and issued a ryotwari patta in favour of the plaintiff. The question arose whether the plaintiff was entitled to eject the defendants, the occupancy tenants on the strength of the ryotwari patta. It was argued for the plaintiff relying upon the observations of Sadasiva Iyer J. in *Subramania Iyer* v. *Onnappa Koundan*,[2] that the grant of ryotwari patta put an end to the occupancy right of the defendants and the plaintiff could therefore eject them. This argument was rejected and held that what the Government resumed and could resume was only the right, title and interest of the inamdar and there being no termination of the rights of the tenants, the plaintiff assignee of the Government acquired no more than the rights of the inamdar. The distinction which their Lordships drew between this case and the unreported case cited to them seems to be, that while in the former case, when the right of occupancy was acquired, the inamdar having been the full and absolute owner of the land, the tenants acquired a right against all the world;

1. 44 M. 550.
2. S. A. Nos. 1473 to 1475 of 1917 unreported.

in the latter, the grant being for a fixed period only whatever right might have been prescribed for by the tenants against the inamdar could not prevail against the paramount owner.

Muhamed Esuf Sahib's case,[1] which we have already referred to is illustrative of a class of cases which form more or less an exception to the rule that on resumption and regrant, the regrantee takes the property free from the obligations of trust which might have attached to it prior to resumption. In that case, the Government resumed a masjid inam on the ground of non-performance of services and misappropriation of funds by the trustees and issued a ryotwari patta in favour of the trustees. Their Lordships while holding that the case was one of partial resumption and therefore the obligations of trust continued, held also on the alternative ground, that the default of the trustees themselves being the basis of the resumption, the principle of Section 88 of the Trust Act will apply and that the trustees were bound to hold the land for the benefit of the trust.

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1. 42 M. 161.

PART III

RYOTWARI TENURE

RYOTWARI TENURE

Ryotwari Tenure is the system of land holding that stands in direct contrast to the Zamindary or Over-lord Tenure which we had to consider in Part I of this book, and has been the principal tenure of this presidency for nearly a century. In this system, the Government, instead of renting out the revenues of villages to middlemen, has entered into direct engagements with every ryot or cultivator in the villages for the revenue he has to pay on his holding. Thus, while the distinguishing feature of the Zamindary or the Over-lord tenure is the existence of an intermediate agency for the collection of the Government revenue, the distinguishing feature of the Ryotwari Tenure is the entire absence of such agency. And this tenure is now prevalent in most part of the Presidency including Malabar and South Canara.

The history of this tenure, according to some, dates back to the time of the Hindu Rajas; but according to others the tenure is but of recent origin, that is to say, it came into existence only when the East India Company assumed control over the Province or there abouts, and was first experimented upon by them as a measure of revenue administration conducive to the welfare of both the ryots and the Government. The balance of historical evidence, however, seems to be in favour of the former view; for instance, Mr. Campbell, after referring to the acquisition by the British Government of the Districts of Salem Brahmal and of Coimbatore, of Dindigul and Malabar, of

Canara and Soonda, observes, "In these new territories as in every part of India, all the fields were held by an industrious and numerous yeomanry or body of small proprietory cultivators, either in severalty or in joint village communities, as before explained; but they paid the public revenue direct into the treasury of the state without the intervention of Zamindars or middlemen of any kind whatever."[1]

But a systematic attempt at experimenting this system was for the first time made by Colonel Read and his then Assistant Colonel Munro in the Provinces of Brahmal and Salem in the years 1792 to 1798 soon after these territories were ceded to the British Government by Tippoo Sahib. The experiment was next extended to the Ceded Districts by Colonel Munro himself and to other places by other revenue officials, in subsequent years. The method adopted by Colonels Read and Munro was in short one of surveying the fields in each village and assessing them independently according to merit. They first surveyed the fields and classified them with reference to the superiority of the soils and the facilities of irrigation. They then estimated the produce of each field and fixed a quantity of grain or a sum of money as the *maximum revenue* payable on it irrespective of the nature of the crops that may be raised therein. In so estimating and fixing the revenue, they were guided by the accounts of previous payments, by the information given by the ryots and sometimes by the crops or the stubble which could be found in the fields at the time of inspection. Then, the amounts payable on the several fields was

1. Appendix to Fifth Report, p. 785.

aggregated and the amount payable on every village as a whole was ascertained. Then these total village assessments were again added up and the assessment on the District as a whole was determined. These being done, it was found in Brahmal and Salem that the grand total arrived at was, owing to the over-estimation of the native surveyors, much in excess of the total collections in the previous years. Consequently, the whole of the rough field estimates underwent a thorough revision and was corrected by the very reverse process. That is to say, the aggregate amount of revenue paid for the entire District during the previous years was taken as the basis; then that amount was distributed over the several villages and in turn upon the several fields, and any error, on the side of excess or deficiency was corrected, though of course with reference to the peculiarities of soil and other things and thus what may be called the proper *field maximum* was arrived at.[1]

The system so started had a three-fold object in view, namely : 1. A settlement with each individual cultivator to the exclusion of all intermediate agency 2. The reservation to the Government of all future increases in the revenue by the extension of cultivation to waste and 3. In the light of the experience gained at a few years' trial, to substitute for the *maximum* an *absolute* revenue, and make it permanent for all time to come.[2]

However, this system had hardly been introduced in Brahmal and Salem, when the orders were received from the Court of Directors for introducing the Zamindary

1, Ibid page 793. 2. Ibid p. 790.

system throughout the Presidency. Consequently, this system was temporarily abandoned, and the districts were parcelled out into a number of mittas and sold to the highest bidders; but most of these mittas soon fell into arrears of revenue and came to be sold and purchased by the Government itself. Even in other districts, except those in the North, the Zamindary system hardly met with any better success. All the same, the great and renouned name of Lord Cornwallis had clothed the system with a veneration, which for sometime could not be shaken; but as the experience grew bitter and bitter, the tide of opinion turned in the opposite direction and voices of protest rose from all quarters against the further extension of the same. So came the ruling from Lord Canning in 1817 as the President of the Board of Control in the following words: " The same views and motives which dictated the original introduction of the Permanent Settlement twenty Five years ago, would not after the experience which had been had of it, justify the immediate introduction of the same system into provinces for which a system of revenue administration is yet to be settled.

" The creation of an artificial class of intermediate proprietors, between the Government and the cultivators of the soil, where a class of intermediate proprietors does not exist in the native institutions of the country, would be highly inexpedient.

" No conclusive step ought to be taken towards a final settlement of the yet unsettled provinces, until it shall have been examined, and if possible ascertained by diligent search and comparison of collected testimonies,

as well as by accurate survey of the lands to be settled, how far the principles of a system which would bring the Government into immediate contact with the great body of the people can be practically and usefully applied to them."[1]

But as already indicated. even long before the above ruling was definitely made, the zamindary system had come to be disliked both by the authorities and by the public, with the result, that the Ryotwari Settlement came once more to be revived wherever possible. The various collectors tried to work out the settlement successfully and show to the people and to the authorities at Home that individual settlement was the one best suited to the country ; but there were obvious difficulties in their way. For instance, the uncertainty of the absolute demand which may be anything short of the maximum assessment, was a source of serious hardship ; but it originated not from the lack of any attempt on the part of the officials concerned to fix up an absolute demand, but from the uncertain state of the country as handed over to the British by the native Governments. The records showed in most cases a very high rent which might not only swallow up the whole of the surplus income after deducting the costs of cultivation and seed but also trench upon the capital of the cultivators themselves. On the other hand, there were also cases in which the assessment was much lighter but it was rather difficult to say exactly, what would be the proper assessment. Consequently, the Government wanted to try the system for sometime, and by the experience gained in the meanwhile to fix abso-

1. Ibid, page, 788.

lutely the revenue payable upon the lands. In fact, in the first years of trial the maximum demand was very seldom made and large remissions on grounds of unproductivity, bad seasons and the rest were very liberally made in favour of the ryots.

Before, however, the system could have anything like a fair trial, the Government had again to abandon it and try another. The reason for this abandonment was two fold : firstly, the impression had been created that the evil of over-assessment was a thing inherent in the system itself ; secondly, the then pecuniary exigencies of the Government necessitated a retrenchment in the establishment of Government offices, without which the ryotwari system in its detailed form could not be worked out. So, the ryotwari settlement was abandoned in several of the Districts and a system of village leases was adopted in them.

The system of village leases or the village settlement as it was called, was something in the nature of a zamindary settlement and consisted of farming out the revenues of each village for a period of three, and subsequently five years, not to a set of stranger contractors as in the case of zamindary settlement, but to the whole or part of the village community itself collectively or in some cases to the head of the village alone, on a stipulation for a fixed payment into the government treasury. Though started in such a fashion, the object of the settlement was to apportion the village revenue, after a few years of trial, upon the various cultivators instead of upon the various fields, and fix in perpetuity the amount so apportioned as

the revenue payable by each cultivator. This object if accomplished should certainly have been a source of further confusion and trouble, especially in cases where a ryot wanted to abandon old lands and take up new ones, but fortunately, as we shall presently see, the system itself came to be abandoned very soon.

As a rule, the amount of rent fixed under these village contracts, being based upon the average collections in previous years, was so excessive that the greater number of the ryots in every village refused to become parties to these contracts. Consequently, the Government had to enter into engagements with a handful of villagers and in many cases solely with the heads of villages, thus handing over the destinies of numerous peasantry, once more, to a set of revenue contractors for the periods specified in the leases. With the heavy government demand before them, these contractors in turn had no other option but to adopt a system of rack-renting and levy the maximum assessment without any remission whatever, on all their brethren. The result was, that the cultivators, one after another, left their highly assesed but never the less fertile lands and took up the waste, because they were lightly assessed; and where there was no sufficient waste in their own villages, they migrated to other villages where waste lands were available and carried on their cultivation. Thus, the village settlement not merely reduced the capital stock of the country by attracting useful labour from the fertile to the inferior soil, but it also created an unhealthy competition between the various villages and a restless spirit for migration among the labouring classes. Taking

the renters themselves, they were not better off either. Some of them not being able to make up the government demand from the villages, and being themselves not wealthy enough to meet it from their pockets, had to suffer imprisonment in the Government jails for months and years together. These lamentable results, were, for sometime, either un-noticed or misunderstood by the Government. But at last, the Home authorities came to know of it and they passed orders about the year 1818, prohibiting the continuance of the village leases and directing a reversal to the ryotwari settlement.[1]

The Court, however, in passing the above orders, made various suggestions for modifying the old Ryotwari system before reintroducing it into the presidency. The first of these suggestions was to re-examine carefully the old settlements and to remove by appropriate remissions and reductions the evil of over assessment. The next was to make the demand on the fields absolute and to avoid its uncertainty till the crops were actually ready for harvest. The third was to avoid all kinds of joint interest and to encourage direct and individual dealing with the Government. And the last was, not to make the Government demand straighaway fixed and unalterable for ever, but to wait till they could have some real and better experience to guide them.

Acting on these suggestions, the Government once more set out to introduce the ryotwari settlement in all the Districts in which it had not already been

1. The visit of Munro to England about this time is said to have had much to do with these orders.—Maclean's Administration p. 31. Land Revenue Tenures.

introduced, or having been once introduced, had been temporarily abandoned in favour of the village leases. And Colonel Munro himself, the founder and ardent supporter of this settlement took his seat as the Governor of Madras in time to see the final establishment of the system throughout the presidency. We have to day the ryotwari settlement modified according to the suggestions, everywhere in the presidency excepting the Zamindary areas. But, the benefit of permanent assessment which was contemplated to come into existence when better experience prevailed, has not only not come into existence but the very idea of it seems to have been abandoned and we only hope that the future legislators of the land will see their way to revive the idea and make permanent assessment an established fact.

The system as it obtains to-day

The system as it obtains to-day, as professor Maclean points out, is not easy of any simple definition : but the incidents of the tenure are both simple and well understood and can be easily enumerated. To start with, as we have already seen, the system is one of individual settlement, and every ryot pays the revenue direct to the government. The fields in a village are classified and assessed according to merit on what is known as the *half-net principle* and the holders of the several fields pay the assessments respectively fixed on them. The assessment so fixed is not permanent but is variable at periodical intervals. The holder of a field is absolute owner of it subject to the payment of the government revenue, and he can sell, mortgage, bequeath

or otherwise dispose of it according to his pleasure. The government issues at the beginning of every revenue year, to every ryotwari proprietor, what is called a *patta*, specifying the lands entered in his name in the collector's registers and the amount of cist or revenue payable by him in respect thereof and the ryot is required to pay the cist so specified in a few instalments to the village officials. Lands which are classified as 'wet' that is to say as being fit for wet cultivation and assessed accordingly, are entitled to a sufficient supply of water at the instance of the government without being charged anything extra therefor. On the other hand, lands classified as 'dry' and assessed on that footing, but which enjoy wet cultivation with the help of government water will be charged extra assessment varying with the circumstances of each case.

Having now seen the main incidents of the tenure, we may consider them in some detail under the following few heads.

The principles and the mode of Assessment.

The principle of assessment with regard to ryotwari lands are set out in Boards Standing Orders, Chapter I. They are (1) the assessment should be upon the land and must be independent of the nature of the produce or the character of the holders; (2) the classification of the lands should be as simple as possible and the same classification should be adopted in all the villages; and (3) the assessment should in no case exceed half the value of the net produce.

The details by which the above principles are carried out are however a little complicated. The lands are first surveyed and classified under different heads specified in the following table, according to their mechanical composition and their chemical and physical properties, and a separate grain value is fixed with regard to each of those classes. The grain value is then converted into money at the commutation price based on the average of twenty nonfamine years preceding the settlement. From the gross value obtained on such commutation, first a deduction of 20 to 25% is made for the vicissitudes of seasons, cartage and merchant profits. Then a further deduction is made for the cost of cultivation including the seed price. The balance is termed the net produce and half of it is fixed as the cist payable upon the land. The calculation is generally made per acre, instead of with regard to each field, and the cist on any particular holding will be determined by multiplying the rate fixed with regard to the soil of the holding by the number of acres comprised therein.

Series	**Class and description.**	**Sort.**
Alluvial and exceptional Series.	I. Island soil. (Lanka).	1. good 2. ordinary 3. inferior.
	II. Permanently improved Thottakkal or Jarib and other lands.	1. Best 2. ordinary.

Series	Class and description	Sort.
Regar Series.	III. Clay Regar containing upwards of ⅔ Clay.	1. Best 2. good 3. ordinary 4. inferior 5. worst.
	IV. Mixed or Loamy Regar containing from ⅓ to ⅔ Clay.	1. Best 2. good 3. ordinary 4. inferior 5. worst.
	V. Sandy Regar containing not more than ⅓ Clay.	1. Best 2. good 3. ordinary 4. inferior 5. worst.
Red Ferruginous Series.	VI. Clay containing upwards of ⅔ Clay.	1. Best 2. good 3. ordinary 4. inferior 5. worst.
	VII. Mixed or loamy containing from ⅓ to ⅔ Clay.	1. Best 2. good 3. ordinary 4. inferior 5. worst.
	VIII. Sandy or Gravelly containing not more than ⅓ Clay.	1. Best 2. good 3. ordinary 4. inferior 5. worst.

Series	Class and description	Sort.
White and Gray Calcareous. Series.	IX. Clay upwards of $\frac{2}{3}$ Clay.	1. Best 2. good 3. ordinary 4. inferior 5. worst.
	X. Mixed or Loamy $\frac{1}{3}$ to $\frac{2}{3}$ Clay.	1. Best 2. good 3. ordinary 4. inferior 5. worst.
	XI. Sandy or gravelly under $\frac{1}{3}$ Clay.	1. Best 2. good 3. ordinary 4. inferior 5. worst.
Arenaceous Series.	XII. Loamy or mixed from $\frac{1}{3}$ to $\frac{2}{3}$ Clay.	1. Best 2. good 3. ordinary 4. inferior 5. worst.
	XIII. Sandy from $\frac{1}{3}$ to $\frac{1}{10}$ Clay.	1. Best 2. good 3. ordinary 4. inferior 5. worst.
	XIV. Sandy under $\frac{1}{3}$ Clay.	1. Best 2. good 3. ordinary 4. inferior 5. worst.

The following tabular form will make the method of calculation of assessment clear.

Soil class	The gross grain value.	Money value at Rs. 2 (the average value for 20 non-famine years) for 24 Madras measures.	Deduct from column 3.			Net per acre.	Assessment per Acre ½ of column (5)	Area of holding.	Assessment on the holding.
			25 % of column 3.	Cost of cultivation.	Total.				
IV (2)	576 Madras measures.	Rs. 48	Rs. 12	Rs. 24	Rs. 36	Rs. 12	Rs. 6	6 acres	3 x 66 Rs. 36

What the assessment represents

The assessment so fixed is merely the assessment on surface cultivation, so that if mines are discovered and worked out, the government will be entitled to charge fresh assessment by way of what is called *royalty.*

The renting value and the value of the net produce

Pauciog here for a while, we may with advantage consider the distinction between what are termed the 'renting value' and the 'value of the net produce' and see how far it may affect the standard of revenue. 'Renting value' is nothing but the value of the rent which a tenant will pay to a land lord when the latter lets out his land to the former: and such value will necessarily be much less than the net produce of the land, because no tenant will undertake to cultivate a land without a share of the profits for himself. On the other hand, the 'value of the net produce' will be the value of the

gross produce minus the cost of cultivation, without any further deduction. It, therefore, follows, that the proportion of the government share being constant, the assessment will be greater or less according as it is based upon the 'value of the net produce' or the 'renting value.' The practicality of this difference will be evident if we just compare the rates of assessment prevailing in Malabar or South Canara with those prevailing in the rest of the province. In Malabar for instance, out of the net produce, a third is first set apart for the cultivator's share and of the balance 6/10 is fixed as the revenue payable to the Government; that is to say, the assessment is calculated on the "renting value." The result is that while in Malabar the amount of assessment works out at 35 to 40 per cent, in Tanjore or Trichinopoly, for instance, it works out at nearly 50 per cent.

The Duration of settlement.

Once an assessment is fixed, according to the present arrangements, it will remain in force for 30 years. But in the absence of any engagement to the contrary, the Government is not in any way bound to adhere to this rule of 30 years period and is at liberty to revise a settlement in shorter intervals. What really happens is, at each settlement or resettlement of a District, the Government notifies in the District Gazette the period during which the settlement will remain in force; and during which the established rates will not be liable to alteration; and that being done, the Government forego their right to revise or alter the rate of assessment at any time before the expiry of the notified period.

Recently two cases arose before the Madras High Court, in which their Lordships had to consider the right of the Government to enhance the settlement rates during the currency of the settlement—*Secretary of State* v. *Ramanuja Chariar*[1] and *Kelu Nair* v. *Secretary of State*.[2] In the former case the facts were as follows: certain lands in Chingleput District were classed as dry and assessed accordingly during the settlement about the year 1909. The notification made in pursuance of the settlement, after mentioning that the settlement would remain in force for 30 years, stated, that '*achu kattus* (to which class the land in question belonged) *which materially interfere with the supply of a Government irrigation work will be retained as ordinary dry, and will be dealt with by the collector in accordance with the practice obtaining in the District,' and that 'the thirty years limit does not apply to lands the irrigation of which may be improved by the Government subsequent to the settlement, nor to lands which may be coverted from dry to wet or manavari.'* The Government purporting to act under the last mentioned provision, enhanced the assessment on the suit lands so as to make it equal to the assessment on wet lands. The question arose whether the Government could do so. Their Lordships held, that the practice of enhancing the assessment as was done in the case before them, did not and could not obtain in the District, that the conversion contemplated by the last provision in the notification was physical conversion from dry to wet and that it could not mean

1. 48 M 282=47 M. L. J. 760.
2. 48 M 580=49 M. L. J. 79.

that the Government reserved to themselves the right to rearrange and reclassify the lands once arranged and classified according to their pleasure; and that the settlement having been once concluded, it was not open to the Government to alter the rates within the 30 years mentioned in the notification. Similarly, in the latter case the assessment on certain 'Kumri' lands situated in the South Canara District, was raised arbitrarily by the Government from 2 to 8 annas per acre during the continuance of the settlement. The plaintiff sued for a declaration that such an enhancement was illegal. The plea of the Government was that (1) there was nothing to prevent them from enhancing the assessment at their pleasure even before the expiry of the term of settlement and (2) the Civil Court was without jurisdiction to go into the question by virtue of section 58 of the Revenue Recovery Act, because, it was a matter relating to the rate of assessment. Their Lordships negatived both these contentions and held, that once a settlement is concluded and it is notified by the Government, that the settlement will be in force for a certain period and that there will be no alteration in the rates of assessment during such period, the government will be precluded from going back upon their notification and imposing any higher assessment than has been already settled "On a construction of the notification" said Justice Venkata Subba Rao after citing the first case above referred to "I am clearly of the opinion that it amounts to a grant in favour of the ryotwari holders of the taluq. The State was possessed of the right, I shall assume, of levying any assessment it pleased. By the notification, it

gives up the right to levy any tax over and above that fixed at the settlement. Its right was indefinite. It had right to fix a high or a low rate. By the notification, the right which was indefinite was made definite and whatever right it possessed to fix a rate in excess of what was actually fixed, it released in favour of the ryotwari holders. In other words, assuming that the Government had a right to a share of the produce above what was fixed at the settlement, that right was by notification granted to the holders of the lands. The act of the Government might be described as a release, grant or an engagement, but by whatever word it may be described, the clear effect is that the Government irrevocably undertook not to enhance the assessment during the currency of the settlement."

Thus, though the Government is not bound to commit itself to any definite period, yet, if it once does so by due notification in the Official Gazette, it will be deemed to have entered into a direct engagement with the ryots not to enhance the assessment during the currency of the settlement and will be precluded from enhancing the assessment during such period.

Principles of Revision

The next question which arises for consideration is, what are the principles which govern the action of the government in the matter of revising the assessments from time to time. But, before we take up the question, it may be necessary to understand the significence of the expression 'unearned increment' which we very often come accross in connection with this subject. The expression

means 'an increment which is not earned, that is to say, an increment in the value of any property which arises without detriment to and not at the expense of the owner thereof or any body on his behalf. To take an example, suppose a person purchases a plot of waste land in a particular locality for a cheap price and leaves it as it is without spending one pie over it. By some chance, the locality assumes prominence and the value of the plot increases thirty or forty fold with the result that the increased value of the land far exceeds the small capital invested on it together with the interest that may be payable on such capital. Then, the value of the property in excess of the capital together with the interest thereon will be said to be the unearned increment. Now the one chief argument in favour of periodical revisions is, that it being granted that the State is entitled to a certain share of the net income, it will be unjust to say, that it should be deprived of its legitimate share of the 'unearned increment' in the value of the lands for all time to come, by being compelled to fix permanently the assessment payable upon the lands. Though, the argument is, in theory, perfectly correct, yet in practice, the evil effects of the revision are so numerous, and the difficulty of ascertaining what exactly is the unearned increment so great, that it will not only be expedient, but economically sound to settle the land tax or at any rate fix certain limitations to the range of enhancement and the discretion of the Government in regard to the matter.[1]

1. A fuller discussion of it may be found in A. Rangaswami Iyangar's Paper on the Land Revenue problem in Southern India read under the Auspices of the Ryotwari Land-holders Association, Madras, 1917.

Technically speaking, there are three main bases on which the land can be assessed, namely the selling value, the renting value and the value of the net produce. The first is believed to be the system followed in America, the second in England and the third on the Continent of Europe;[1] and so far as India is concerned we have already seen that both the second and the third are followed—the second in places like Malabar and Canara and the third in the rest of the presidency. But, so far as the question of unearned increment is concerned, both the second and the third stand on the same footing, because they depend almost entirely upon the productive value of the land and the cost of labour. Now, the causes which contribute to the enhancement of the renting value or of the value of the net produce are four in number, namely, 1. increased productivity due to improvements to land; 2. adoption of improved methods of cultivation; 3. rise in the price of the produce; and 4. diminished expenses of cultivation and diminished cost of bringing the produce to market. Under the first head will come not only increments due to improvements effected by the Government, but also increments due to improvements effected by the ryot. For example, while the Government may construct new irrigation sources from time to time, the ryot may put large quantities of manure from year to year or construct wells or make other improvements and make a barren waste productive. But, it is conceded, that the Government will not claim any share in the increment due to the improvements effected by the ryot, but only in

1. Imperial Gazetteer of India.

the increment due to the improvements effected by themselves. The practical difficulty which, therefore, arises under this head is that of estimating the latter, entirely excluding the former. Then, as regards the next, it seems to have been recognised by the Government itself that it will be nothing but false economy to discourage in any way the employment of increased skill and labour, by taxing them at intervals. It is under the third head that the Government hope to realise a large part of their expected increment: and so far as the theory goes, there is no denying the fact, that with the increase in the prices of the produce, the value of the Government share must necessarily increase. But, here again, a liberal margin shall be allowed for over-estimation and fluctuations of prices and the enhancement should be made only when there is a substantial change in the prices. Under the last head, we have to take into account the facilities of carriage created by the establishment of railways, the construction of new roads, etc., as also the cheapness of the labour.' But the Government seems to have made it a policy to leave these advantages as far as possible untaxed with a view to avoid the minute inquiries which may be otherwise necessary.[1] To resume, therefore, the main considerations which affect the question of the revision of assessment are 1. the increase of productivity due to improvements made at the expense of Government, 2. the rise in the prices of staple food crops and 3. to some extent, the carriage facilities afforded by the construction of railways, roads, etc. at the cost of the Government. So much regarding

1. Srinivasa Raghava Aiyangar, pages, 210—213.

the general principles of the land revenue assessment and of its revision at periodical intervals.

Classification of Lands: wet, dry, garden and manawari.

If we now turn to the general classification of the cultivable lands in a village from the standpoint of revenue, we will find them classified under either of the following heads, namely, (1) wet (2) dry, (3) garden and (4) manawari. But of these four, the first and the second alone are recognised in all parts of the Presidency and the third and the fourth are recognised only in certain parts of it. For instance, the classification of lands into garden lands is peculiar to Malabar and a few other parts, and similarly the classification into manavari, is not a thing to be found in every village, though of course, it is not peculiar to any one district or districts and may be found in some part of practically every District in the Presidency.

Wet lands are the lands which enjoy wet cultivation and have a free supply of water from irrigation sources. Dry lands on the other hand are lands which enjoy dry cultivation and depend entirely upon the rains. Garden lands are lands used for rearing gardens or topes. And manavari lands are lands upon which wet crops are grown with the aid of rain water impounded on the land or with the water of swamps, small ponds and the like, without there being any permanent or unfailing source of water supply. The expression is in some places also used to denote tank bed lands. Of these, the wet lands carry the maximum assessment and the dry lands the

minimum ; and the Manavari lands are assessed at special rates which are intermediate between the wet and the dry rates. Garden lands stand on a separate footing, and where they are found, they are dealt with independently and assessed at rates varying according to the nature of the gardens and the income derivable therefrom. For instance in Malabar, the gardens which mainly consist of cocoanuts are assessed at $\frac{1}{3}$ their net income,[1] and it will be seen, when we come to consider the assessment on wet lands in the same district, that this assessment is somewhat more lenient than the assessment on the wet lands.

Single and double crop lands.

The lands in a village are again classified into single crop lands and double crop lands, the former denoting lands in which only one crop is raised per year and the latter denoting lands in which two crops are raised per year. In the case of dry lands no extra assessment is charged for raising a second crop. But in the case of wet lands which have an unfailing supply of water in all ordinary seasons for two crops, an assessment equal to $1\frac{1}{2}$ times the assessment on single crop lands of similar description is levied ; that is to say, an extra assessment of half that leviable on the first crop is levied on the second crop.

Where wet crops are raised on dry lands making use of Government water, an additional assessment called

1. The net income in these cases=the gross income—(25 % of the gross income for vicissitudes of seasons + the cost of cultivation). Here it may be noted that in the case of wet lands in Malabar the allowance made for vicissitudes of seasons is only 15 %.

water rate is levied on them; and invariably, it will be found that the ordinary dry assessment together with the water rate will be much higher than assessment on wet lands of a similar description. The object of the last rule seems to be to prevent the ryots from avoiding their lands being classified as wet and yet surrepticiously using the Government water for raising wet crops, thereby escaping the heavy assessment otherwise leviable upon them on the footing of wet lands.[1]

Conversely, when a dry crop is grown on wet land, but water becomes available in the irrigation source during any portion of the year, when it can be used for growing a wet crop, the usual wet assessment will be levied. Where, on the other hand, no supply is received or the supply is received at a time when it cannot be used, or in quantity insufficient for raising a wet crop, only the dry assessment will be charged provided the dry crop is not irrigated. If however, the dry crop is irrigated, the collector may at his discretion, charge either the full wet assessment or water rate in addition to the dry assessment, but subject to this condition, that in the latter case, the total assessment on the field in question should not exceed the single wet assessment leviable thereupon.

Lands Irrigated by wells.

In some places, we find wet crops being raised on dry lands, not with the help of water from any Government source, but with the help of water taken from wells sunk by the ryots themselves. In such cases, no extra assessment will be levied upon the lands unless the wells

1. B. S. O. I. (4).

are so situated as to get their water not from their own springs, but from channels, rivers or tanks belonging to Government, by direct flow or indirect percolation. Even where the wells derive their water from Government sources, as last mentioned, the lands will be treated practically as dry but will be charged with water rate at one fourth or one eighth of the difference between the wet and dry rates of assessment according as water is raised by a single or a double lift. However, no further rate will be levied for the irrigation of a second crop from such wells.[1]

Exemption from water cess.

Where dry lands are used (1) for the growing of manure or fodder crops or (2) for raising the crops necessary for transplantation, no water rate will be charged provided the following conditions are satisfied: in the case of manure or fodder crops, their cultivation should either immediately precede or immediately succeed the main harvest, and they must be completely ploughed in, cut off or fed off, before they ripen seed. Similarly, in the case of the raising up of the crops for the purpose of transplantation, the crops must be removed before they ripen seed and used up for transplantation. And in all cases, the crops should bonafide be used for the agricultural requirements of the cultivator himself.

The irrigation cess Act

All the above rules regarding water rates and extra assessment will be clear if we now turn to the provisions of the Madras Irrigation Cess Act.

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1. B. S. O. I. (1).

The provisions of the Act relating to ryotwari lands run as follows.

1. Whenever water is supplied or used for purposes of irrigation from any river, stream or channel, tank or work belonging to or constructed by Government and also (2) whenever water by direct or indirect flow or by percolation, or drainage from any such river, stream etc. or through adjoining land, irrigates any land under cultivation or flows into a reservoir and is thereafter used for irrigating any land under cultivation, and in the opinion of the revenue officer empowered to charge water cess (subject to the control of the collector and the Board of Revenue) such irrigation is beneficial to and sufficient for the requirements of the crops on land, it shall be lawful for the Government before the end of the Revenue year succeeding that in which the irrigation takes place, to levy at pleasure on the land so irrigated a separate cess for such water, and the Government may prescribe the rules under which and the rates at which such water cess as aforesaid shall be levied, or alter and amend the same from time to time.

Provided that no cess shall be leviable under this Act in respect of land held under ryotwari settlement which is classified and assessed as wet unless the same be irrigated by using without due authority, water from any source herein before mentioned and such source is different from or in addition to that which has been assigned by the revenue authorities or adjudged by a competent Civil Court as the source of irrigation for such land.

Arrears of water cess payable under this Act shall be realised in the same manner as arrears of land revenue may be realised by law in the Madras Presidancy.

It is evident from these provisions, that water cess can be levied only, when water from a Government source is used for irrigation and then also subject to the exception mentioned in the ease of wet lands. In this connection we may well remember the observation of their Lordships in *Secretary of State* v. *Ramanuja Chariar*[1] that such practice (meaning the practice of levying extra water cess for carrying on wet cultivation not with the help of water from any Government source

1. 48 M. 282 at 286.

but with the help of rain water falling into the lands) never did obtain *nor could obtain*; the significance of the words in italics being that under the Irrigation Cess Act, the Government could not levy any water cess unless water from a *Government source* was taken in for the purpose of irrigation.

Remission

Remission is the reduction made by the Government either in whole or in part of the assessment payable by a ryot. Such a reduction will be made only on certain special grounds. In the case of unirrigated lands, generally, no remission at all will be made, because the asssesment on them is very moderate and has been fixed with reference to the vicissitudes of seasons. In the case of irrigated lands, however, a remission will be made when due to acts of God (*vis major*) such as drought, inundation, floods and the like, either they are rendered unfit for cultivation or there is a general failure of crops. Also, where a land is registered as double crop land, but due to the failure of water supply only one crop is raised, there will be a remission of the assessment due on the second crop. The remissions, which we have just now considered are spoken of as *casual remissions* contradistinguished from what are called *fixed remissions*. The latter head comprises of cases in which the Government for the purposes of reclaiming waste numbers, or in consideration of certain services, have granted lands to persons at a low rate of assessment either permanently or for a fixed period. Grants on *cowl tenure* and *desabandham inams* are illustrations of the latter class.

The Discretion of the Government

We have already seen that though the Government is not bound to undertake that it will not revise an assessment for any definite period, yet, when once it does so, it cannot go behind the undertaking and a Civil Court will be entitled to grant an injunction against the government from making any enhancement in the rate of assessment during the currency of a settlement.

Now, we shall deal with the right of the Government to alter or vary an assessment, quite apart from any settlement which precludes the Government from so altering or varying it during the subsistence of such settlement. Section 58 of the Revenue Recovery Act II of 1864 provides that "No Court of Civil Judicature shall have authority to take into consideration or decide any question as to the rate of land revenue payable to Government, or as to the amount of assessment fixed, or to be hereafter fixed on the portions of a divided estate." The question which then arises for consideration is what is the scope of the section. As has been pointed out by Subramanya Iyar J. in *Madathappu Ramier* v. *Secretary of State*,[1] the Section was enacted merely to save the Government from the numerous litigations which might otherwise arise by its being called upon by every ryot, in a civil court, to establish the propriety of the assessment levied upon his holding. But then, is there or is there not any limitation on the power of the Government to levy an assessment? Suppose, the Government chooses to assess a land to a tax which altogether exceeds the very

1. 27 M. 386 at 389.

produce of the land. Can it be said that the Government is entitled to do so and no Civil Court can question it? This question has been answered by their Lordships Justice Subramanya Iyar and Justice Bashyam Iyangar in the 27 Madras case above referred to. "It may not be superfluous to point out" says Subramanya Iyar J., at page 389 "that in the actual exercise of the prerogative of the Crown above referred to, (the prerogative to levy an assessment) the crown is not supposed to proceed without regard to definite and well established principles; for, neither in old times, nor now, has the crown been held entitled to more than a fixed share of the produce—be it either the theoretical one-sixth of the ancient writings or the half net again and again proclaimed by the present Government as the share it takes, or some other"—The observations of Bashyam Iyangar J., at pages 398 and 399, are probably more emphatic. He says, "The immemorial and common law prerogative of the crown in India is only to Raja Bagham or *King's share of the produce* of the land and the land revenue or assessment now levied on land represents the King's share of the produce—however high or low the share or rate may be in relation to the produce—and cannot *exceed the produce.* An assessment, therefore, which is prohibitive and manifestly in excess of what the land may produce and is professedly out of all proportion to such produce is clearly *ultra vires* of the Government and such action of the executive is not exempted from the jurisdiction of the Civil Courts." "It is significant" he adds "that in Section 58 the word *rate* is used in the first part of the Section and not *amount* which is used in

the latter part of the section." It therefore seems clear, that where an assessment exceeds the produce itself the Civil Courts can intervene and say that the act of the Government is *ultra vires* and that the assessment is consequently not recoverable.

Also, where the question to be determined is whether or not the Government is entitled to levy an assessment at all or whether there is a right on the part of a particular ryot in limitation of the right of the Government to levy any assessment it pleases, Section 58 will not be a bar and a Civil Court can certainly go into that question. For, it is one thing to say, that an assessment is high or low, and an altogether different thing to say, it is not leviable at all.

Supposing the Government attempts to levy full assessment on lands granted in inam to an individual, a Civil Court can go into the propriety of the Government's action and say that either the Government is entitled or is not entitled to do so. This point was decided by our High Court as early as in *Lakshi* v. *Purvis*,[1] and it has been since followed by the Full Bench in *Maduthappu Ramier* v. *Secretary of State*,[2] above referred to.[3]

Recovery of Revenue

The law and the procedure relating to the recovery of Revenue are now contained in the Revenue Recovery Act II of 1864 as amended by

1. 2 M.H.C.R. 167.

2. 27 M. 386.

3. See also *Secretary of State* v. *Ram Ugrah Singh*, 7 A. 140 and *Government of Bombay* v. *Sundarju Savaram*, 12 B.H.C.R. App. 277.—These cases have also been cited and followed in 27 M. 386.

Section 1 defines among other things the term *public revenue* and states that for purposes of the Act it will include all cesses or other dues payable to Government on account of water supplied for irrigation.

Section 4 lays down that when the whole or portion of a kist shall not be paid on the due date[1] the amount of the kist or its unpaid portion shall be deemed to be an arrear of revenue.

Section 5 deals with the recovery of revenue. It provides, that " whenever the revenue may be in arrear, it shall be lawful for the collector or other officer empowered by the Collector in that behalf to proceed to recover the arrear, together with the interest and costs of process, by the sale of the defaulter's movable or immovable property or by execution against the person of the defaulter in manner hereinafter provided." And according to Section 7 arrears of revenue will bear interest at 6 per cent. per annum.

The rules to be observed in the seizure and sale of movable properties are contained in Sections 8 to 25. Some of them are :

(*a*) before distraint is made, there must be a demand in writing ; (*b*) the distress levied should not be excessive ; (*c*) there must be a proclamation of sale before the actual sale ; and (*d*) the sale must be by public auction to the highest bidder.

Sections 25 to 35 deal with the attachment and sale of immovable property. Here also (*a*) there must be a written demand before any attachment is made ; (*b*) it

1. To be fixed by the Board of Revenue under Section 3.

will be open to any person claiming any interest in the land attached or to be attached, to get it released by paying the arrears, interests and costs incurred; (*c*) there must be a notification of the sale clear one month before the actual sale; and (*d*) the sale must be by public auction to the highest bidder.

Under Section 37. A. Any person owning or claiming any interest in the property sold may, at any time before the expiery of 30 days from the sale, have the sale set aside on depositing in the treasury of the taluq in which the property is situate, (*a*) a sum equal to five percentum of the purchase money to be paid over to the purchaser, together with (*b*) a sum equal to the arrears of revenue for which the property was sold plus the interest thereon and the expenses of the attachment, management and sale and other costs due in respect of such arrears. Where more persons than one make the required deposit, and apply under the section, the application of the first depositor will be given preference.

And under section 38, an application may be made by any person owning or claiming any interest in the property within 30 days from the date of sale, to have the sale set aside on the ground of some material irregularity, mistake or fraud in publishing or conducting the sale. But, no sale will be set aside on the ground specified above, unless the applicant also proves to the satisfaction of the collector, that he has sustained substantial injury by reason thereof.

If a person applies under section 38 to set aside the sale, he will not be entitled to make an application under 37 A. unless he withdraws the former.

On the expiration of 30 days from the date of sale, if no application for setting aside the sale is made or having been made has been rejected, and the collector is satisfied that there is no other ground on which the sale should be set aside *suo moto,* he shall make an order confirming the sale. After confirmation of the sale, the collector shall issue under his seal and signature, a certificate of sale in favour of the purchaser. Such certificate shall state the property sold and the name of the purchaser and shall be conclusive evidence of the fact of purchase in all courts and tribunals.[1]

After confirmation, the collector is also bound to publish the sale in the village in the manner provided by section 39. Where notwithstanding such publication, any lawful purchaser of land may be resisted and prevented from obtaining possession of his purchased land any court of competent jurisdiction, on application and production of the sale certificate, shall by appropriate processes put such purchaser in possession of the land, as if the same had been decreed to the purchaser by a decision of the court.[2]

Section 42 is important and provides as follows: All lands brought to sale on account of arrears of revenue shall be sold free of all incumbrances, and if any balance shall remain after liquidating the arrears with interest and the expenses of attachment and sale and other costs, it shall be paid over to the defaulter, unless such payment should be prohibited by the injunction of a court of competent jurisdiction.

1. Section 38.
2. Section 40.

Section 48 deals with the arrest and imprisonment of the defaulter. Where the arrears of revenue cannot be recovered from the sale of the properties of the defaulter or of his surety, if any, and the collector believes that the defaulter is wilfully withholding payment, he may get the person arrested and send him to jail. The periods of imprisonment to which a defaulter may be subjected are mentioned in the section.

Lastly, we have section 58 dealing with the jurisdiction of the civil courts which we have already considered.

Irrigation and the Control of Water Supply

The question of Government control over the irrigation and the supply of water is somewhat complicated and deserves a careful study.

It is now well settled by a long series of decisions[1] as well as by practice, that the conservation and control of works and sources of irrigation is the especial duty and function of the Government. But the question of some nicety and intricacy which we have to consider is what is the exact relationship of the Government to the ryots in regard to this matter. In the case of *The Madras Railway Company* v. *The Zamindar of Carvetinagaram*[2], the Judicial Committee was called upon to deal with the position of a Zamindar in the matter of maintaining a tank for purposes of irrigation. In dealing with that

1. *Sankaravadivelu* v. *Secretary of State for India*, 28 M. 72; *Narayanaswami* v. *Secretary of State for India*, 24 M. L. J. 36; *Fischer* v. *Secretary of State for India*, 32 M. 141.

2. 1 I.A. 364 = 22 W.R. 279.

position, their Lordships observed as follows; "The tanks are ancient and form part of what may be termed a national system of irrigation, recognised by Hindu and Mahomedan law, by regulations of the East India Company, and by experience older than history, as essential to the welfare, and indeed, to the existence of a large portion of the population of India. The public duty of maintaining existing tanks and of constructing new ones in many places, was originally undertaken by the Government of India, and upon the settlement of the country has, in many instances devolved on Zamindars, of whom the defendant is one. The Zamindars have no power to do away with these tanks, in the maintenance of which large numbers of people are interested, but are charged under Indian law, by reason of their tenure, with the duty of preserving and repairing them. From the statement of facts, referred to in the judgment of the High Court, and vouched by history and common knowledge; it becomes apparent that the defendant in this case is in a very different position from the defendants in *Rylands* v. *Fletcher*.[1]..................................

* * * * * *

The rights and liabilities of the defendant appear to their Lordships' much more analogous to those of persons or corporations on whom statutory powers have been conferred and statutory duties imposed.[2]

From the above observations two things are clear: 1. maintenance of works of irrigation is a duty cast upon the Government and 2. the rights and liabilities of

1. L. R. 3 H. L. 330.
2. 22 W.R. 279. at.

Government in connection with irrigation works are not governed by the same principles which regulate the rights and liabilities of private individuals, but by principles which regulate those of persens or corporations acting under statutory authority.[1]

Now then what are the principles which regulate the rights and liabilities of persons or corporations acting under statutory authority? The law with reference to this matter was considered in *Canadian Pacific Railway Co.* v. *Parke*[2] where the leading authorities on the point were referred to and explained by Lord Watson who delivered the judgment of the Privy Council. There, he laid down "wherever according to the sound construction of a Statute, the legislature has authorised a proprietor to make a particular use of his land, and the authority given is, in the strict sense of law, *permissive merely*, and *not imperative*, the legislature must be held to have intended, that the use sanctioned *is not to be in prejudice of the common law rights of others*."[3] The principles deducible from the above proposition are according to their Lordships in *Sankaravadivelu Pillai* v. *Secretary of State in Council*[4] three in number. The first is, that where the authority is permissive merely, it can be exercised only subject to the common law rights of others. The second is that where, on the other hand, the authority is imperative, the person authorised incurs no responsibility whatever for the injuries caused to others provided however he is not found guilty of negligence. And the third and the last is that the burden

1. 32 M. 141 at 158.
2. 1899 A.C. 535.
3. 1899 A. C. 535 at 544 and 545.
4. 28 M. 72.

lies on those who seek to establish that the law or legislature intended to take away the private right of individuals to show, that by express words or necessary implication such an intention appears.

In our country, so far as the construction of new works or the alteration of old ones are concerned, it cannot be contended that the duty of the Government is in any sense imperative. Consequently, in regard to such matters, it is the duty of the Government to see that the new constructions or alterations do not interfere with the private rights of parties. In an old case, the plaintiff, a Zamindar, brought a suit to establish his right to an uninterrupted flow of water through an artificial channel which ran into a tank belonging to him and to compel the removal of sluices erected across the said channel by the Government for the purpose of diverting the flow of water into another channel intended for the irrigation of a certain government village. The Government contended that in the exercise of their paramount power to control and regulate the flow of water for the purpose of irrigation, they were entitled to do anything they pleased, "for the increase and protection of the revenue and the right and interest of the state and all persons concerned." Their Lordships negatived this contention and held, that the plaintiff having acquired an easement in the flow of water through the artificial channel in question, it was not open to the Government to do any act which will prejudicially affect the same.[1]

That case was soon followed by *Krishna Ayyan* v.

1. *Ponnusami Tevar* v. *The Collector of Madura*, 5 M. H. C. R. 6.

Venkatachala Mudali.[1] 'There, the plaintiffs, the Mirasdars of two villages sued for an injunction directing the defendants to close an irrigation channel which had been newly opened and to remove the sluice erected in connection therewith. It appeared, that by the opening of the new channel there was a diminution in the quantity of water flowing into an old channel which formed the irrigation channel of the plaintiff's lands. The contentions of the plaintiffs were two fold: first that plaintiffs had an absolute right to the uninterrupted flow of all the water in the old channel without subtraction or diminution by the defendants (of whom the Government was one) and that any diminution, though not causing loss, was an invasion of their rights, and second that if they had not any such absolute right, they had a right to a supply of water for the necessary purposes of irrigation and that the possible diminution of the necessary supply entitled them to the relief claimed. For the first of these contentions, they relied on the case in 5 M. H. C. R. above referred to. Their Lordships held that the case in 5 M. H. C. R. was different, because it dealt with the absolute right of a Zamindar as such for the uninterrupted supply of water through an artificial channel, which he claimed by prescription, that the plaintiffs could not in the circumstances of the case claim any exclusive or absolute right to water in the old channel as contended for by them, that all they were entitled to was only a supply of water necessary for their cultivation and that there having been no proof of insufficiency of supply, the injunction asked for could not be granted.

1. 7 M. H. C. R. 69.

Thus, in this case, the plaintiffs failed not because there was no right in them for a necessary supply of water but because there was no proof that the opening of the new channel resulted in such a diminution in the flow of water in the old channel as to make it insufficient for the irrigation of plaintiff's lands.

The next important case on the subject is *Ramachandra* v. *Narayanaswami.*[1] Here again, it was a suit by the ryots virtually against the Government for the closing up of a new irrigation channel, on the ground, that the opening of that channel resulted in a material diminution of the supply of water necessary for the cultivation of the plaintiffs' lands and caused damage to them. It was found that the allegations of the plaintiffs were true. The Court therefore held that though the Government had an undoubted right to distribute the water of Government channels, yet that power did not include the power to disturb the existing arrangements or to prejudice the right of a ryot to the necessary supply of water for cultivation and that therefore, the Government had exceeded their powers in sanctioning the opening of the new channel.

With this we may pass on to *Sankara Vadivelu Pillai* v. *Secretary of State for India,*[2] which is considered one of the leading authorities on the subject. The facts of the case were as follows. In 1882 a Calingula was constructed by Government for the purpose of reducing the flow of water into a tank through a channel. The effect of the calingula was to cause the water diverted from the channel to flood the plaintiff's land. The

1. 16 M. 333. 2. 28 M. 72.

question arose if the Government was entitled to construct the Calingula so as to cause damage to the plaintiff, even though the construction was beneficial to the general body of the ryots. Their Lordships Sir Arnold White C. J. and Subramaniya Iyer J. held after an elaborate review of all the authorities both English and Indian, 1. that the Government had the right to distribute the water of Government channels for the benefit of the public, subject to the rights of a ryotwari landholder, to whom water had been supplied by Government, to continue to receive such supply as is sufficient for his accustomed requirements; 2. but the right of the Government in connection with the distribution of the water, does not include a right to flood a man's land, because in the opinion of Government, the erection of a work which has this effect is desirable in connection with the general distribution of water for the public benefit; and 3. that consequently, the fact that the opening of the Calingula was necessary for the protection of the tank, and there was no negligence in the construction of the Calingula—so far as the Calingula was concerned—did not deprive the plaintiffs of their right to have their property protected. They also added that even if the Government had been empowered by statute to construct the Calingula in question, it would be for the Government to show that they could not exercise their statutory powers without injuring the plaintiff's lands.

In this state of authorities, a case of some moment arose in connection with the *Peranai dam* in the *Vaigai river*. About the year 1900, the Government raised the level of the dam by about two feet with a view to take off

water at a point higher up the river, through a channel which they had newly widened. The plaintiffs, who were the riparian owners down below sued the Secretary of State for India in Council, for a declaration, that the defendant had no right to increase the height of the dam or the width of the old channel, and for an order for the removal of the dam, for the closing of the new channel and for a permanent injunction.[1]

The defence set up was :—

i. that the defendant as owner of the bed of Vaigai and the water flowing therein had full power to regulate in the public interest the distribution of the water in the river and that consequently even as riparian proprietors, the plaintiffs were not entitled to the undiminished flow but merely to the amount sufficient for their customary needs;

ii. that as a fact the defendant had not diminished but increased the usual flow ;

iii. and that as the plaintiffs knew, the two works complained of had been executed by the defendant in order to utilise the large increased supply of water let into the stream by the defendant at a point 86 miles above the dam from what was known as the *New Periyar Reservoir*, constructed by the defendant in the Travancore Hills after years of labour and at a cost of over a crore of

1. *Robert Fisher* v. *The Secretary of State for India in Council*, 32 M. 141.

> rupees for the benefit of the District which was frequently affected by famine.

The court went into the evidence and found that no sensible injury had been proved to have been caused to the plaintiffs and that in fact the supply of water had been increased to some extent.

Their Lordships, after a careful survey of the authorities, accepted the contentions of the defendant and held, that in law the defendant was entitled to divert so much of water as he put into the stream before it reached the lower proprietor, if in so doing he did not injure the latter, and that the plaintiffs not having proved any sensible damage to them by the action of the Government, must fail and the appeal should be dismissed.

Now to resume, the decided cases referred to so far, establish the following propositions. The Government has got the absolute power of regulating the supply of water from the natural streams and tanks belonging to them for the purpose of irrigation. In the exercise of this power their position is analogous to that of a person acting under a statutory authority. They are generally under no obligation to construct new works of irrigation or alter old ones, though there is such an obligation on them to maintain the works of irrigation already in existence. The authority in regard to the construction of new works or the alteration of old ones thus being permissive merely, the Government can exercise it only so far as it does not interfere with the vested rights of individuals. A right to get the accustomed supply of water necessary for the cultivation of one's lands and a right not to have his

lands flooded so as to render them unfit for cultivation, are instances of such vested rights. The right of a riparian owner along a natural stream is not to get an undiminished flow of water along the stream, but only to such a flow as will be necessary for the cultivation of his lands: or in other words a lower riparian owner can have no complaint against an upper riparian owner for diverting the water so long as the former gets the supply of water necessary for his cultivation and so long as no sensible damage is caused to him by such diversion.

Having so far considered the liability of the Government for what one may call their acts of *misfeasance*, we may now proceed to consider their position with regard to their acts of *nonfeasance*; that is to say how far the Government can be held liable for their failure to keep the works of irrigation in proper repair or for their omission to see that every ryot gets an adequate supply of watrr for purposes of cultivation.

The leading authority on this part of the subject is *Secretary of State for India in Council* v. *Muthu Veerama Reddi*.[1] But before we consider the facts of the case, may be well to refer to one or two earlier decisions which have a bearing on the subject.

We saw that in the case of the *Madras Railway Company* v. *The Zamindar of Karvetinagaram*[2] their Lordships while negativing the liability of the Zamindar for damages caused to the defendant Railway company, observed that the maintenance of the tanks in question

1. 34 M. 82.
2. 1 I.A. 364=22 W.R. 279.

was a duty cast upon the Zamindar at the time of the settlement, and consequently he was not merely entitled but was bound to maintain it, because on that depended the irrigation of large extent of lands. Relying on this observation, their Lordships in the 28 Madras case also laid down, that while the authority for the construction of new works or the alteration of old ones is permissive merely, that with regard to the maintenance of existing ones is *imperative*.

In *Chinnappa Mudaliar v. Chikka Naicken*[1] the plaintiff, a Government ryot, occupied lands the cultivation of which depended upon a supply of water from a Government channel which was ordinarily kept open until a specified date when it was closed. The defendant, the Tashildar of the Taluq, negligently but without malice and without any intention to harm the plaintiff, caused the channel to be closed at an earlier date than was customary, thereby causing damage to the plaintiff's crops. It was the duty of the defendant to see that the channel was closed on the fixed date, but he had on this occasion closed it too soon by mistake. The plaintiff thereupon sued the defendant personally, not as representing the Government, for the damages sustained by him. Their Lordships held that the plaintiff had no cause of action against the defendant personally and on that ground dismissed the suit. But while so dismissing the suit, they said "that in as much as the plaintiff's right to a supply of water was *founded on contract*, a right of action in case of water being improperly withheld, might exist against the Government, but that there

1. 24 M. 36.

was none against the defendant, by whom no legal injury had been caused. Or in other words their Lordships expressed an opinion that the right of a ryot to get a sufficient water supply was a thing personal and was based more or less on a contract between him and the Government. The Judges in the 28 Madras case however, doubted this opinion and observed that the right of a ryot to water is more in the nature of *a right in rem* than in the nature of a *right in personam.*

In this state of authorities the case of *Secretary of State for India in Council* v. *Muthu Veeranna Reddi,*[1] above referred to came up for decision. The facts of the case were simple. The plaintiff sued to recover damages from the Secretary of State for India in Council, alleged to have been caused to the plaintiff by the defendant's failure to repair a Calingula by means of which water was diverted into a channel that supplied the tank which was the recognised source of irrigation to plaintiff's land.

The question arose, whether the plaintiff was entitled to do so. The District Judge held purporting to rely upon 7 M. H. C. R. 64, that "when land in a ryotwari holding is classed as wet, and the water has been supplied for a number of years, there is a contractual obligation to continue its supply provided that it had not become impossible by act of God. The case came on appeal to the High Court. The Government contended that, though it was their paramount duty to maintain the works of irrigation and regulate the supply of water, yet there was no right in the ryot enforceable against them in law and

1. 34 M. 82.

that whatever their position might be as regards acts of misfeasance, thhy could not be held liable for acts of non-feasance. Their Lordships substantially accepted this contention and expressed themselves as follows :[1]

" The case of the *Madras Railway Company* v. *The Zamindar of Karvetinagaram*,[2] does not help the plaintiff because, their Lordships in that case had not to decide and did not decide, the extent of the duty undertaken by the Government and cast upon the Zamindar, but only whether the Zamindar was in the position of the defendant in *Rylands* v. *Fletcher*.[3] As regards persons and Corporation on whom statutory powers have been conferred and statutory duties imposed, the rule derivable from the English cases is that in the absence of a common law liability as regards individuals, no such liability arises in cases of nonfeasance, merely because the statute imposes a duty.[4]

" The ryot's payments of revenue being based upon a division of the crop between him and the Government, when the crop fails there is nothing to divide, and so far as we know, no ryot has hitherto thought of claiming more than this, that when the crop fails for want of water, the land tax shall be remitted. It is unnecessary to decide whether a ryot can claim this remission, when failure of water supply is due to neglect to maintain a work of irrigation ; but it cannot be denied that there

1. The substance is extracted not the actual words.

2. 1 I. A. 364 = 22 W. R. 279.

3. L. R. 3 H. L. 330.

4. *Saunders* v. *Holborn District Board of Works* (1895) 1 Q. B. 64 and the cases cited therein ; and The Municipal Commissioner of *Sydney* v. Bourke, 1895 A. C. 433.

is no custom or practice recorded or unrecorded in this presidency, under which a ryot receives compensation from the State or a Zamindar measured by the value of the crop lost owing to defects in irrigation works which command his land. No doubt, the case in 24 Madras put it that the liability of the Government in this matter was contractual, but that view was dissented from in the 28 Madras case. Again, the 28 Madras case itself laid it down that the duty of the Government as regards maintaining the existing works was *imperative*, but they did so only to point out that in such cases, not even acts of *misfeasance* would give a cause of action unless negligence was proved on the part of the Government." In the result they held that the plaintiff had no cause of action against the Government.

The position therefore now is this: The Government cannot be held liable for damages caused by the non-repair of irrigation works, measured by the value of the crop lost, though generally speaking, the duty of maintaining the works of irrigation is cast upon the Government. It may probably be, that a ryot who is damnified can claim a remission of the revenue payable for the year, but, even on this point there is no definite authority.

Lastly, we may briefly consider the nature of a ryotwari proprietor's right to water with regard to the source from or through which the water is supplied. We have already seen that his right, whether viewed as a matter of contract, or of easement or of some customary right *in rem*, is to a supply of water sufficient for the cultivation of his lands in the usual manner. But,

suppose, the Government in the exercise of its right to regulate the supply of water, stops one source of irrigation and opens another instead. Can the ryot complain, and if he can, under what circumstances? There is no direct authority on the matter, but there are observations of judges, which being quite in accordance with the principles so far discussed, lay down as a necessary corrollary, that the ryot will have no right to complain unless there is any diminution in the supply of water resulting in damages to his lands. For example, Justice Subramanya Iyer, says in *Sankara Vadivelu* v. *Secretary of State for India*[1] that one of the distinctive features of the ryotwari tenure is the right in the Government to alter or vary the sources of irrigation so long as it does not affect the usual supply of water necessary for each ryot: Or in other words, a ryot is not entitled to say "from this source alone the Government must supply me water, and not from any other source." This observation was referred to with approval by their Lordships in 32 Madras 423. If however, the new source, by reason of its level or due to any other cause fails to serve the lands as well as the old, and in consequence, the value of the lands are substantially affected or the right is otherwise substantially prejudiced, it seems that the ryot will have a cause of action against the Government.

Though the Government may, subject to the right of a ryot to the usual quantity of water, alter or vary the source of irrigation, one ryot cannot block up a source of water supply and say to his neighbour who is thereby pre-

1. 28 M. 72 at 80.

judiced, that he (the latter) shall take the necessary water from another source or in a different way. In such a case, the ryot who is affected, may without proof of any damage whatever, sue the other for removing the obstruction;[1] for the principles which regulate the relationship between a ryotwari proprietor and the Government are quite different from those which regulate the relationship between the ryotwari proprietor themselves *inter se*.

Riparian rights

Having so far discussed the position of the Government in regard to the regulation of water supply, we may note in passing whether and to what extent riparian rights to water are recognised in our Presidency.

In England every riparian owner on a natural stream has a right to take water from the stream for all ordinary purposes such as drinking and culinary purposes, cleansing and washing, feeding and supplying the cattle on his land. If in the exercise of his ordinary rights, a riparian owner exhausts the water altogether, the lower riparian owners cannot complain.

Besides the ordinary use of water above mentioned, a riparian owner has the right to use the water of the natural stream for other purposes as well which may be termed extraordinary. For instance, he may use the water for the irrigation of his land, if he returns it into the river opposite to his land, with no other diminution than that caused by absorption or evaporation attendant on the irrigation. But what quantity of water he may take for irrigation purposes will depend upon various

1. *Rama Odayan* v. *Subramanya Iyer*, 31 M. 471.

factors, such as the size of the stream, the nature of the flow etc., and upon the general rule that no material injury should be caused to the riparian owners down below.

In brief, a riparian owner in England is entitled to a reasonable enjoyment of water as it passes his land, as a natural incident of the ownership in the land.[1]

The question is, if this right is recognised in our province to any extent. The question is of special importance to us by reason of certain provisions in the Irrigation Cess Act[2].............and the Land Encroachments Act,[3] which lay down, that in so far as a river or stream does not belong to a landholder and he has not otherwise acquired any right to the use of the water therein for irrigation purposes, the Government is entitled to levy what is called a water cess on the land whenever water is taken in for such purposes.

The last illustration to section 7 of the Indian Easements Act makes it clear that riparian rights are recognised in our country both in regard to the ordinary and the extraordinary use of water in natural streams.[4]

So then in India as in England there can be no objection to a riparian owner using the water for his ordinary purposes namely clearing, washing or culinary purposes. But, whether, as in England the riparian

1. Hals Vol. XXVIII, pp. 425 and 426.

2. Act VII of 1865 as modified by V of 1905 and II of 1913.

3. III of 1905.

4. Illustr. J. to S. 7; See also *Perumal* v. *Ramasami* 11. M. 16; *Dinkar* v. *Narayan*, 29 B. 357; *Pershed Singh* v. *Joynath Singh*, 24 C. 365 P.C.; *Kalu Kabir* v. *Jan Meah*, 29 C. 100.

owner can instead of resorting to the stream straight, draw out the water of the stream for the above purposes into his own land by means of a channel for instance, is somewhat doubtful. Where such a practice has continued long, it can be sustained as a natural right of a riparian owner or an easement right. No case seems to have arisen on the point but judging the matter from general principles of law, one may say, that even in India, subject to any restrictions that may be imposed by the municipal law of the country, a riparian owner would be entitled to draw in and use the water in a natural stream for his ordinary purposes in any manner he pleases provided he does not injure the rights of the lower riparian owners.

The position in regard to the use of the water for irrigation purposes though definitely recognised by the Easements Act has been rendered somewhat more difficult by local legislations. Under the Madras Land Encroachments Act III of 1905 the beds and banks of all rivers, streams etc., are vested in the Government, except in so far as they are the property of any other landholder, and in regard to ryotwari tracts, the Government themselves have rightly or wrongly assumed the position of the landholder, treating the ryotwari proprietors as mere tenants.[1] The result is that except in the case of Zamindaries and Inams, no question of riparian right can at all arise, and even in the case of Zamindaries and Inams, it would seem,

1. That this assumption is unjustified, we have already discussed in the Introduction. But, that even an eminent Judge like Sadasiva Iyar has made some statements favouring the above position as late as 1915 in his judgment in *Secretary of State* v. *Janakiramayya*, 29 M.L.J. 389 only shows, that the misconception into which the judges fell during the early days of the British administration has not yet been completely, removed.

that unless it is shown that the bank forms part of the Zamindary or inam concerned, the Zamindar or the inamdar will not be entitled to any riparian rights as such.

The decided cases on the point, which are after all not numerous, have adopted the reasoning set out above, and held that while a Zamindar or an inamdar may be entitled to riparian rights in water, a ryotwari proprietor cannot have such rights.[1]

Jamabandhi.

Jamabandhi is an annual settlement of every taluk, which is conducted at the end of each revenue year and before the commencement of the succeeding one by the Collector or the revenue divisional officer. At this annual settlement, the village and taluk accounts are examined and among other things a fresh stock is taken as to the extent of lands held by each ryot and the proper assessment payable by him on such lands. It is at this stage, that remissions are confirmed and over and under assessments checked with a view to see that justice is done and the village officers are free from corruption or other misconduct. We have already seen that a ryot is at liberty to acquire new lands, relinquish old ones, or alienate the lands standing in his name; and when such acquisition, relinquishment or alienation takes place, the land revenue payable by the ryot will necessarily vary

1. *Secretary of State* v. *Raghavachariar*, 47 M. 861; per Sadasiva Iyer J in *S. of S.* v. *Janakiramayya*, 29 M L J. 389; per Sankaran Nair J in *S. of S.* v. *Janakiramayya*, 37 M. 336; *Prasada Rao* v. *S. of S.* 40 M. 886 at 905 and 905 P.C. See also *Ponnusami Thevar* v. *Collector of Madura*, M.H.C.R. 6.

and it is, therefore, only just and proper, that the Government should ascertain before the commencement of the next revenue year, the exact amount payable by a ryot and make proper demand for that amount. The patta, which may be roughly described as a bill for the assessment due to the Government, is issued only after Jamabandhi.

Patta.

Let us now consider what a *patta* means and signifies. To some extent we have anticipated the definition of this term in the last paragraph. It is a piece of paper issued by the Government, through the village accountant to each individual ryot, specifying the extent and nature of the lands held by him, their survey number or numbers their classification and lastly the amount or amounts of cist payable upon the several lands. It is, so to speak, nothing more than a mere bill, issued to the ryot, so as to put him on notice as to the extent of his liability before the demand is actually made.

The question has been sometimes discussed as to the exact scope and importance of a patta: that is to say, whether it could be called or construed to be, in any sense, a document of title. It was laid down as early as I, Moore's Indian Appeals by their Lordships of the Judicial Committee in *Freeman* v. *Fairlie*[1] that a patta granted by a collector is not a muniment of title but at best only an evidence of holding or possession according to the fiscal arrangement of the Government. The case was of course one from the Province of Bengal, but there is hardly anything peculiar to that province, which

1. 1 M.I.A. 305.

would make the ruling inapplicable to Madras. In fact, that ruling has been cited and followed by our High Court in a number of later cases, namely *Secretary of State* v. *Kasturi Reddi*[1]; *Muthu Veera Vandayam* v. *Secretary of State*[2] and *Secretary of State* v. *T. V. Raghava Chariar*.[3] In the first of these cases Bashyam Iyangar J. expressly calls it mere bill and says that it does not and cannot convey any title to property.

In a recent case, the nature of a Patta came up for consideration in a somewhat different way. There, a person purported to create an equitable mortgage of his properties by depositing with the mortgagee, the patta relating to certain lands belonging to him. The question arose, whether the patta was such a document of title by the deposit of which in the city of Madras a mortgage could be validly created under Section 59 of the Transfer of Property Act. Their Lordships the Chief Justice and Justice Srinivasa Iyengar held, though a patta is not a title deed in all senses of the expression and for all purposes, yet for the creation of an equitable mortgage it was a sufficient document of title, because, all that was requisite for such a purpose was the deposit of some deed evidencing one's title coupled with an intention to create a charge on the properties referred to in the deed.[3] The soundness of this decision may be open to doubt, but even assuming that it is correct, there is nothing in it to show that they meant to depart from the ruling in the

1. 26 M. 286 at 292.
2. 29 M. 461 at 467.
3. *The Official Assignee of Madras* v. *Basu Deva Narayin Badri Narayin Doss*, 48 M. 454.

earlier cases. So then, we may take it, that as the authorities stand at present, a patta is not a title deed, but can at best be only an evidence of possession or enjoyment. But this evidence by itself is not entitled to much weight even as regards possession, because, as we shall presently see, it is quite possible now that the patta stands in the name of one person, while ownership is in another and the possession and enjoyment is in a third. However, the Government having already taken steps to remove these anamolies as far as possible, it is hoped, that the object will be achieved in the years to come, when probably the importance of patta as evidence of possession may considerably increase.

In a secondary sense, the term patta is also used to signify not the piece of paper issued, but the estate or the lands referred to or comprised in the paper. Thus for instance it is said, the extent of patta number 44 is 20 acres and 30 cents, or the assessment due from that patta is Rs. 100.

The counterpart of *patta* in the collector's register is called *chitta*.

It is highly desirable that the owner of a property is also the registered pattadar in regard to that property; and it has been the policy of the Government from very early times to see that this object is accomplished, as far as possible. The anamoly of the ownership being in one person and the patta standing in another's name is mainly due to the fact, that when the property is transferred to or devolves upon another, the party or parties interested, do not take care to have the patta also transferred to the name of the transferee or the successor as the

case may be. The result of such anamoly is sometimes serious. Supposing the real owner does not pay the cist, the amount will be realised from the pattadar, if necessary, by the sale of his holdings, and he will not be heard to say, that he is not the real owner of the property. Similarly, if the pattadar makes default in respect of the cist payable by him in regard to lands other than the one transferred to another included in his patta, the land which has been transferred to the other will still continue liable to be sold for such default, in spite of the transfer. For, as we have already seen in dealing with the separate Registration Act in regard to Estates, the Government will look to the pattadar and to nobody else for the payment of their dues.

The cases of transfer or devolution necessitating a change in the patta may be one or the other of the following: (1) Private or voluntary transfers; (2) Compulsory or involuntary transfers; and (3) Succession or devolution on the death of another.

In the case of private or voluntary transfers, the consent of both parties is generally necessary for a corresponding transference of patta. If one of the parties object, the collector will ordinarily make an inquiry into the validity of the objection; and if the objection is unfounded, he will order the necessary transfer of patta; else, he will direct the parties to settle their rights by suit or otherwise in a civil court. If, of course, both parties consent, there will be no difficulty and the patta will be transferred as a matter of course. Now, in order to avoid disputes and objections of the kind above referred to, it is now ordered that the registering officers, when-

ever transfers of property come up for registration before them, should obtain the signatures of both the parties to the transfer in a form called the patta-transfer-form and send it on to the revenue authorities ; where either of the parties is absent, he may receive an application for the transfer signed by such party. If, however, the parties refuse or are unwilling to execute the application, the registering officer shall by himself prepare a notice of the transfer in the form prescribed and send it on to the revenue authorities.[1] Thus an automatic transfer of the patta is sought to be effected, by means of this process. But, as will be evident, the above procedure will not be of any use in regard to private transfers which are not registered, that is to say transfers for small values, and transfers by unregistered wills.

Under the head of compulsory or involuntary transfers come transfers by decrees of courts and transfers by revenue sales; we may also add, the decrees which declare the disputed rights of parties.

In these cases, on the production of the decrees or the certificates of sale or certified copies thereof accompanied by an application signed by either party, the Collector or the revenue officer empowered in this behalf will order the transfer of patta, even though the other party thereto may not express his consent in the application, and even though he may raise an objection to the transfer.

As regards devolution by heirship or survivorship, the village officials, especially the Kurnam is enjoined to

1. B. S. O. 31 1920, Edition p. 113.

report the matter to the Tahsildar or the deputy Tahsildar and get the transmutation done at the earliest time.'

Further details regarding these transfers may be found in the Board's Standing Orders No. 31.

Sometimes we have what are known as joint pattas, that is to say, pattas issued in the name of more than one person. The issue of joint pattas are generally discouraged, but, when on the ground of inconvenience or impossibility, property has to be kept undivided among the co-owners, then, joint pattas have necessarily to be issued. For example, where a private tank is owned by a number of persons, it is not possible to divide it by metes and bounds; similarly where properties of a deceased Hindu are owned by several co-widows, it may be very inconvenient to divide the same. However, even in those cases, the pattas are sometimes issued in the name of one of the co-owners, who probably happens to be the managing member. So too in the case of a Joint Hindu family, though the property belongs to many, the patta stands usually in the name of the father, if there is one, or in the name of the eldest member who is the manager. In these matters, therefore, there is no hard and fast rule and only when parties are anxious that separation is done.

Sometime back, there was a limit to the smallness of the holding for the purpose of separate registration. That restriction is now taken away, and one is entitled to get his land separately registered in the Collector's registers, however small the land may be.

Occupancy right

We saw in regard to 'Estates', that the presumption to start with in the case of ryoti lands is, that the occupant has a permanent right of occupancy in his holding. Now, we may consider, if there is any such presumption in the case of ryotwari lands. The matter is now settled beyond doubt by a long series of cases both of the High Court and of the Privy Council and it will therefore be sufficient to refer to the last two cases decided by the Judicial Committee on the point. In *Sethu Ratnam Aiyar* v. *Venkatachala Goundan*[1] the plaintiff sued to eject the tenants by due notice. The defendants pleaded that they had permanent rights of occupancy in their holdings and their tenancy could not therefore be determined by notice. It was found as a matter of fact, that the tenants had the permanent right of occupancy which they pleaded for, and the plaintiff's suit was dismissed. In deciding this point, their Lordships had necessarily to refer to the question of presumption raised by either side and they said " Permanence is not a universal and integral incident of an under-ryot's holding; if claimed it must be established. This may be done by proving a custom, a contract, or a title, and possibly by other means. Custom is out of question here; there is no suggestion of it. Contract has been decisively negatived by the finding of the District Court. Title was left untouched, and it was on title that the High Court pronounced in the defendants' favour; for the meaning of their finding is not, that there was

1. 43 M. 567.

subsequent change in the relation of parties, but that at the inception of these relations, the defendants' predecessor possessed occupancy rights."

In the above quotation their Lordships pithily summarise the whole law on the point. To start with, there is no *presumption of occupancy right in favour* of a tenant holding under a ryotwari proprietor; and if the tenant pleads any such right the burden is upon him to show that he has it, by proving either a custom or contract, or initial title such as by grant, or any other thing.[1]

The other case which we may refer to is *Naina Pillai Marakayar* v. *Ramanathan Chettiar*.[2] The facts of this case where also similar to those of the previous one. The trustees of a Hindu temple in Tanjore, after giving notice to quit sued to eject certain tenants of lands belonging to the temple. The tenants claimed that the village was an 'estate' and that they had a permanent right of occupancy. Their Lordships held relying on the earlier cases including the *Sethu Rathnamayar* v. *Venkatachala Goundan*,[3] that the onus was upon the defendant tenants to prove that they had a permanent right of occupancy, that having regard to the facts of the case, they had not discharged that burden and that consequently the plaintiffs should succeed.

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1. The most important of the earlier cases on the point on which their Lordships rely are: *Secretary of State for India* v. *Lutchmeswar*, 16 C. 223 P.C.; *Mayandi Chettiar* v. *Chokkalingam Pillai*, 27 M. 291 P.C.; *Chidambaram Pillai* v. *Thirurengada Chariar*, 7 M L.J. 1; *Rangasami* v. *Gnana Sambandham*, 23 M. 264; *Chekkati Zamindar* v. *Ranasooru Dhora*, 23 M. 318; etc. For other cases see page 43 Mad. 572.—

2. 43 M. 337 P. C.

3. 43 M. 567.

The effect of the decided cases therefore is that there is no presumption in favour of the tenant, that he has a permanent right of occupancy, that the rule laid down by Section 101 of the Evidence Act will apply, and that the burden is upon him to prove that he has any such right. The considerations which would weigh with the Court in deciding the questions of fact are immemorial occupation, fixed rent, documents evidencing an early grant and such like things. But it must, at the some time, be remembeed that the proof of occupation at a fixed rent or any one of the other facts cannot, by itself be taken as conclusive evidence on the matter.[1]

Relinquishment

According to their Lordships in *Sankara Vadivelu* v. *Secretary of State*,[2] the three distinguishing features of the ryotwari tenure, other than the individual character of the Settlement, are (1) the periodical re-settlement involving also a revision of the assessment (2) the right of the Government to control and distribute the supply of water and (3) the right of a proprietor to relinquish the whole or any part of his holding at pleasure. And we may probably add a fourth namely, the absence of any presumption of permanent right of occupancy, in favour of the under-tenants. Of these, we have so far dealt with the first the second and the fourth. Let us now deal with the third.

The right or liberty of a ryot to relinquish his hold-

1. See *Secretary of State for India* v. *Luchmeswar*, H. C., 223; and *Mayandi Chettiar* v. *Chokkalingam Pillai*, 27 M. 291 and other High Court cases referred to supra.

2. 28 M. 72.

ing at pleasure is undoubtedly a real right and a privilege. It may, probably, at the outset look strange why the liberty to relinquish a holding should be considered something in the nature of a right or privelege at all. But, if we, for a moment remember the incidents of some of the earlier systems which preceded the ryotwari, for example, the *Appanam*, the *Pattukattu* and *Tarambarthi*, it will be clear, that to start with, this liberty was considered to be distinctly a valuable right and a privilege. However, with the increase in the value of the land on account of various causes, the importance of this right has dwindled and it is very rarely that we now hear of cases in which lands are relinquished by ryots on the ground of their being extremely barren and unproductive.

As regards relinquishment, certain dates are fixed by the Board's Standing Orders with regard to the various districts, before which dates the ryots should, if they want to avoid the assessment for the ensuing revenue year, give notice of their intention to relinquish, so that the Government may be in a position to grant the land relinquished to another.

Though it is stated above, that that a ryot may relinquish either the whole or part of his holding, there are one or two limitations in regard to that. They are: 1. the land relinquished by the ryot must be accessible (i.e.) he will not be permitted to retain all lands in his holding except the central one, as this would not be a suitable holding for another ryot; and 2, a portion of a survey field may not be relinquished, which measures less than two acres, if dry, or less than one acre, if wet,

except where the portion to be relinquished has been destroyed or rendered useless by floods or other causes beyond the ryot's control.[1]

Where land is entered in a joint patta, the relinquishment will not be accepted unless all the joint holders consent thereto.[2]

Relinquishment cannot be refused on the ground that arrears of revenue are due upon the land; nor will the relinquishment put an end to the liability of the holder to arrears which have accrued due prior to the date of relinquishment. Such arrears, may, at the option of the Collector, be either written off, or realised by the Sale of the relinquished land, or of any other property belonging to the defaulter.[3]

So far, we have been dealing with express relinquishment. Suppose a ryot abandons his holding and goes away without any intention of taking it back. Then what is the right of the Government? It has been held from a very early time, that where an intention is clearly made out on the part of the holder to abandon his holding, the Government is entitled to resume it and grant it to another.[4] This is put on the ground that whatever is *bona vacantia*, that is, without an owner, the Crown takes by virtue of its prerogative. Some difficulty, however, has arisen in regard to cases where, the intention to

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1. This second limitation is distinctly mentioned in the Board's Standing orders. But it is more than doubtful whether this restriction is legally binding.

2. See B. S. Os. 32 & 33.

3. B. S. O. 33 p. 115, 1920 Edition.

4. *Rajagopala Iyengar v. Collector of Chingleput*, 7 M.H.C.R. 98.

abandon is not made out, but the ryot allows the land to lie waste and also fails to pay the revenue due to the Government. In *Rajagopala Iyengar v. Collector of Chingleput*,[1] a mirasdar purchased certain land in 1850 and allowed it to lie waste from 1853, without at the same time paying the revenue due to the Government. In 1866, the local revenue authorities purported to resume the land and grant it in favour of another mirasdar. The question arose, whether the revenue authorities, as representing the Government, were entitled to do so. Their Lordships held;

1. that a tenancy,[2] could be determined only by resignation or abandonment on the one hand or by the procedure prescribed by the Revenue Recovery Act (II of 1864) on the other;

2. that letting the land lie follow would not necessarily lead to the inference of abondonment; and

3. that in the case before them, the plaintiff not having been found to have abandoned the land, he had been ejected in a manner which the law did not recognise. Or in other words, their Lordships held, that allowing a land to lie waste, though accompanied by non-payment of cist, will not by itself entitle the Government to resume the land, unless, on the one hand abandonment is proved as a matter of fact or on the other, the procedure laid down by law for the recovery of revenue is adopted and the land is sold and purchased by the Government itself. This ruling was however dissented from by a full bench

1. Ibid.

2. The term 'tenancy' is not certainly happy to define the relationship between a ryotwari holder and Government.

of the High Court in *Fakir Muhamed* v. *Thirumalachariar.*[1] But the judgement in the latter case was vitiated by the fact that it followed the erroneous view propounded in an earlier case[2] namely that the patta was in the nature of a lease from *fasli* to *fasli* and that the Government could therefore resume the lands at the end of any *fasli* if they chose to do so. The later cases have therefore ignored the full bench and have followed the ruling in 7 M.H.C.R. 98. For instance, in *Sankaran* v. *Mahamod*[3] the Government granted the bed of a tidal river in favour of a ryot. The ryot was regularly paying the revenue and other cesses for over 30 years and was enjoying the property. The Government suddenly attempted to oust the grantee and confer title upon new man. The plea of the Government was, that the ryotwari patta was in the nature of a lease from year to year and they could therefore resume and regrant the land to any one they pleased. The Court held following 7 M.H.C.R. 98 that the Government could not oust the occupant provided he regularly paid the revenue and even if he failed to pay the revenue, he could be evicted only by due process of law under Act II of 1864.[4]

The result of these cases therefore is, the Government can resume a ryotwari land only when it is abandoned or relinquished by a ryot. If the land falls into arrears of revenue, it may be sold for such arrears,

1. 1 Mad. 305.

2. *Chokkalinga Pillai* v. *Vaithilinga Pandara Sannathi*, 6 M.H.C.R. 164.

3. 28 M. 505.

4. The ruling in 7 M.H.C.R. is also cited with approval in *Secretary of State* v. *Astamoorthy*, 13 M. 89 at pages 116 and 123.

and if need be, purchased by the Government itself. Otherwise, the Government cannot oust the original holder.

Having so for considered the general principles of the ryotwari settlement throughout the presidency, we may with advantage turn to the Districts of Malabar and South Canara and consider them somewhat separately, because, the system of landholding in those districts is somewhat peculiar and afford us an interesting study.

IN MALABAR.

The land Revenue settlement in Malabar differs from the ordinary ryotwari settlement in the rest of the presidency, in that in Malabar the existence of a landlord between the state and the actual cultivator is recognised in the theoretical distribution of the produce, on which the rates of assessment are based. For instanstance, in the case of wet lands, from the commuted value of the annual grain outturn, a deduction of 15 per cent. is first made for vicissitudes of season and unprofitable areas; then a further deduction is made for cultivation expenses, of the balance $\frac{1}{3}$ is set apart for the cultivator's share; and $\frac{6}{10}$ of the remainder is fixed as the assessment. The calculation with respect to dry lands is similar and is even more lenient.[1]

The reason of this difference from the rest of the presidency can be understood only if we bear in mind the essential distinction, or at any rate what according government constitutes an essential distinction, in regard to private ownership of land between Malabar and the

1. Malabar District Gazetteer. Pages 287 and 332.

rest of the presidency. The right of ownership in land in Malabar is termed *janmam* and is said to comprise the full and complete ownership in land; so that, the owner of janmam right or *jenmi* as he is called, is absolutely entitled not merely to the soil, but to all things above and below it from the highest point of heaven to the lowest depths of the earth. At one time, there was considerable dispute on this question in regard to Malabar as it was with regard to the other parts of the presidency. But it was ultimately accepted by the Government itself that in Malabar, at least, the private ownership must be taken to exist in the *Jenmis* and that the government could not claim any such right. For instance, Sir Charles Turner, the late Chief Justice of the Madras High Court after reviewing all the available evidence on the question expressed himself as follows. "It appears to me impossible to resist the conclusion that whatever the origin of the title, the *jenmis* were and for centuries before British rule have been, the owners of the soil in full proprietary right, and that their rights were recognised even by the class that would have been most hostile to them, the *mappilas*, who owing to the persecution of Tippu, had for some years been masters of the situation."[1]

The tradition with regard to Malabar is: that the God Parasurama, who created it, granted it to a set of Brahmins to be held by them tax free; that accordingly these Brahmins held and cultivated the lands, without even the obligation to pay any tax; the rajas who ruled over the country had large extent of private and home

1. Malabar District Gazetteer, pages 298 and 299.

farm lands; that they supported themselves from the produce of such lands and by certain fugitive forfeits; that only in cases of public necessity as of war or invasion they had recourse to the voluntary of constrained assistance of the subjects; that even in such cases, the assistance was generally in service and it was only occasionally in money. This traditional view was accepted as correct by the commissioners appointed by the Madras Government in 1844 and they held, that in the political history of Malabar, the one fact which is supported by considerable amount of evidence is that lands were originally held free of rent and taxes and that in time of public exigency the rajas levied a tax of one fifth of the produce on all lands except those appertaining to the temples.[1]

The jenmis who were originally mostly brahmins could not cultivate the lands by themselves and invariably resorted to a system of leases, some of them called *Kanampatams* and others *verumppatams*. The term *patam* signified rent and was used with *kanam* or *verum* to indicate a lease on an advance by the lessee or a simple lease. The lessees were termed *Kanamkars or Kudians* according as the leases were *Kanam patams* or *Verumpatams*, and they were the practical occupants of the land having as much right to their share of the produce as the landlords had to theirs. But, whatever their practical position, these tenants had no permanent right of occupancy in the lands which they cultivated and were entirely at the mercy of the *jenmi* landlords.

However, the practice of direct cultivation being almost unknown to the *jenmis* and the welfare of the

1. Ibid 288 and 296.

large body of tenants being a matter of vital importance, the British Government, in settling the land revenue in that part of the presidency, have taken into consideration not merely the landlord who seldom cultivates his lands but also the tenant who is in charge of the actual cultivation and have fixed it at a much lower rate than in the rest of the presidency.

For, assuming that the Government failed to recognise either the share of the landlord, or of the tenant in fixing the assessment, there will always be a tendency on the part of the landlord, on whom lies the burden of paying the revenue, to rackrent the tenant, ignoring all previous custom and to evict the latter whenever he demurred. Indeed, this tendency on the part of the landlords about the middle of the last century impoverished many a tenant and subtenant alike and formed the immediate cause of the open insurrections by the latter in what were known as the Mappila rebellions.[1]

The evil effects of rackrenting and of eviction last mentioned leads us on to a consideration of the steps adopted by the Government in order to mitigate them. The first step in this direction was, as already indicated, a moderation in the matter of assessment, giving due recognition to the tenant's share. But, this, by itself, was not sufficient to improve the position of the tenant, because the Jenmi might at any moment turn out the tenant who had practically spent all his capital in improving the Jenmi's lands, so that the latter would be

1. Ibid, 235.

deprived even of the semi-subsistance allowance which he might otherwise get from the lands. This was particularly so because, there was in Malabar abundance of labour but very little of capital. The real position of the poor and hard worked tenants will be best understood when we also come to consider what are termed the *renewal fees* which a *jenmi* was entitled to from his *kanom* tenants. The renewal fees seem to have had their origin in an old custom by which a kanom tenant was bound whenever a new Jenmi succeeded to the estate, to remit a portion of the advance made by him to the landlord on his entry: but this practice in course of time was abandoned, and another took its place, namely, that of the tenant making such a remittance, or otherwise making a fresh gratuitous advance to the jenmi of an amount equal to 20 to 25 percent of the original amount, at the time of renewing the old lease. And this new practice became a powerful weapon in the hands of some of the unscrupulous jenmis and enabled them to make any demand they pleased at the time of the renewal and turn the tenant out if he refused to satisfy the demand. The result was that a tenant at the time of the renewal was in this difficult position of choosing between two evils, namely, that of subjecting himself to a heavy and arbitrary demand and that of being evicted with the consequent deprivation of the benefits of his capital which he had spent in improving the lands under his control. These agrarian evils were soon brought to the notice of the Government, but it took them nearly half a century to find out an effective remedy. At last *the Malabar Compensation for Tenants Improvements Act*

came to be passed in 1887 which laid down that whenever[1] a landlord evicts a tenant, the tenant will be entitled to the full market value of the improvements effected by him; so that if the demand was high and arbitrary, the tenant may refuse to pay the same and call upon the landlord to pay him the value of the improvements before evicting him. That act has since been superceded by Act 1 of 1900 which contains substantially the same provisions and secures to the tenant the full value of his improvements in case of eviction by the landlord.[1]

Now, closely connected with the absolute ownership of the cultivable lands in the Jenmis is also the question of ownership of the waste; and the Government, rightly or wrongly, have recognised it in Malabar that *prima facie* every piece of waste land, belongs to some Jenmi and that they could lay no claim to it unless disclaimed by him.

Having thus considered the basic principles of the tenancy law in Malabar, we may now notice a few varieties or modes of landholding which are peculiar to the country. However, it must here be distinctly understood that the peculiarities of these tenures are only as between the tenants and the landlord and that so far as the Government is concerned, they all come under the ryotwari system, though of course subject to the one difference indicated at the outset.

1. But finding that this Act by itself has not been sufficient to protect the interest of the tenants a new bill has now been introduced in the Local Legislative Council and we only hope that it will become law and better the position of the tenants, without at the same time injuring the rights of the Jenmis.

From the nature of things, all these tenures partake either wholly or partly of the nature of a lease for, they are nothing more than different types of relationship between the landlords and their tenants under different conditions and circumstances; and if we examine them, we will find that they fall into two classes namely (1) those which are leases simpliciter and (2) those which are leases and mortgages combined.

Simple leases.

Simple leases are called *Verumpatams.* These leases enure from year to year and the rent payable by the tenant is as a rule high. In some cases, the rent will swallow practically the whole of the net produce minus the cost of seed and cultivation so that what the tenants get will be no more than subsistance wages. The old customary rent, however, seems to have been, more or less ⅓ of the net produce, but that is no longer the rule though, there may be here and there cases, in which such a rate is still adopted, by reason of the unfertility of the soil or other causes.[1] The rent payable by a verumpatam tenant is called *patam.*

The term *munpatam* is used to denote a lease in which the tenant pays in advance one year's rent as a security for the regalar payment of rent. *Munpatam* is also known as *Thalaipatam.*

Brahmasvam, Anu Bavam, Adima and *Karima* are also leases, but they are perpetual in character and are more in the nature of inams than in the nature of mere leases; for these are grants at nominal quit rents, made

1. Malabar Dt. Gazetteer pp. 306 and 307.

definitely as a matter of favour. These are therefore appropriately dealt with under *Inams.*

Mortgages *Cum* leases.

The most important and familiar form of a lease-mortgage is *Kanom.* The origin of the tenure is variously sought for. At one time there were two conflicting views regarding the right of a Kanom tenant. Some thought, he was a part owner with the *Jenmi* and had permanent rights in the soil; but others maintained, he was merely a tenant on special terms by reason of an advance made by him and he could therefore not be considered as a part owner in any sense. One of the ardent supporters of the former view was Mr. Logan the author of the Malabar District Manual. However, his theory has not been accepted by later authorities and courts of law and it is now settled for nearly one century, that the Jenmi is the absolute proprietor of his holding and the *Kanom* is a redeemable tenure.

It seems that not only during the days of Tippu and Hyder but even at periods anterior, the jenmi who found his position precarious and the task of collecting the rent from some of the unruly tenants difficult, made it a condition of the lease that the tenant must deposit with the jenmi one or two years rent in advance, with a view to set off that amount against the rent in cases of default. Also, as the tenant would not allow his money to be with the jenmi without interest, there was a stipulation to the effect that the deposit should carry a certain rate of interest and that in case the tenant was regular in his payments, he should be entitled to deduct such interest

from the annual value of the rent and pay the balance alone.

But even after the circumstances which made it unsafe for a jenmi to trust his tenant had disappeared, this system of letting out was continued, either because the jenmis were avaricious or because there were tenants anxious to cultivate and ready to compete by making advances. What was more, in course of time, not merely tenants desirous of cultivation, but mere moneyed speculators bent upon making profit by lending out their moneys for interest, began to enter into *Kanoms* as a sure and safe method of investment.

Thus, though the tenure originated in the attempt of the jenmi to safeguard his interest, it outlived its purpose and afforded a safe and convenient method of investment in the case of many a moneyed speculator. The result was a new set of Kanomdars who never did or could cultivate the lands got under Kanom, but who merely let them out to a number of tenants in turn and made what profit they could. But, to whatever use it is now put, the formula of the tenure has not undergone any change and may be shortly described as follows: The Kanomdar or the Kanom tenant deposits with the jenmi a sum of money or quantity of grain as an advance and takes up the property on lease, the stipulation being that the rent payable by the tenant to the landlord shall be the rent which would ordinarily be payable upon it less the interest at a certain, usually small, percentage upon the deposit made. The tenant also undertakes to pay the land tax either directly to the Government or indirectly

through the landlord himself. The rent thus payable by a Kanom tenant is called *purapad* or *michavaram* and if we may adopt the phraseology of the Malayalees the *purapad* or *michavaram* will be equal to the *patam* (the ordinary rent) minus the interest on the Kanom amount. The amount advanced is itself sometimes spoken of as the *Kanom*.

Therefore, simply put, a Kanom is nothing more than a combination of a lease and a mortgage, and is describable as an anamolous mortgage within the meaning of Section 91 of the T. P. Act. It is mortgage to the extent that an advance is made and interest is payable thereon and it is a lease to the extent that land is let out to the tenant on condition of paying rent, but that rent will be diminished by the interest payable on the advance. Originally, these Kanoms used to be for two, three, eight ten or any other number of years according to stipulation; and now also, where there is a specific stipulation as regards the period, it will enure only for such period, but, if nothing appears in the document it is presumed to be for twelve years. So then, in the absence of any contract to the contrary a Kanom tenant cannot be evicted before the expiry of twelve years: nor can he in turn ask the landlord to repay the Kanom amount before that period.

At the end of twelve years, the tenant may be evicted, but in practice this is rarely done. The same tenant is allow to continue, on his paying what is called an *avakasam* or renewal fee. This renewal fee will not generally exceed $\frac{1}{8}$ or $\frac{1}{4}$ of the Kanom amount, but there is no legal restraint on the power of the landholder to

make any demand. When, however, any unconscionable demand is made by the landholder, the tenant will probably be obliged to quit but he has the right to say that he must be paid the full value of the improvements as well as the Kanom amount before he is evicted. And as has been already pointed out, this is the only check imposed upon the arbitrary power of the landlord to claim any renewal fee he pleases. The Kanomdar can mortgage as well as sub-mortgage his interest.

The non-payment of the *purapad* by the tenant will not in the absence of any special contract entail forfeiture, but an open denial of the landlord's title will and in the latter case the tenant is liable to be ejected. In cases of wilful waste, the landlord will also have the right to damages and may set it off against the value of the improvements if any. The description above given is strictly speaking applicable to the Kanoms of the South Malabar only and not of the North Malabar. For in North Malabar, the distinction between the landlord and tenant is less defined than in the South Malabar and Kanom is generally nothing more than an ordinary mortgage.

Melkanom or Melcharth, is a Kanom granted to a person other than the original Kanomdar, and arises when the jenmi wants to raise a further loan on the same property but the Kanom tenant is either unwilling or finds it impossible to make any further advance. On the expiry of the period of the original Kanom, the melkanomdar may redeem the original Kanom and get into possession of the property; but he cannot do so, before the expiry of such term.

Once, there was some doubt as to whether the jenmi or landlord before creating a melkonam is bound to give the original Kanomdar the option to make the further advance. But this doubt was removed by the case of *Marakar Parameswaran*,[1] as early as 1882, and it has been settled law ever since that the jenmi is not bound to give the Kanomdar the option of making further advances before demising it to another and the Kanomdar cannot insist upon the option being given to him unless there is a stipulation to that effect.

Otti or Otthi is another type of Kanom and differs from the latter only in two respects. First, the otthidar is entitled to pre-emption in case the jenmi wishes to sell the premises and secondly the advance is so high that the interest thereon practically swallows up the whole of the patam with the result, that the jenmi receives merely a pepper-corn-rent.[2]

Kaividuga Otti, Otti Kumpuram, Nirmudal, and *Janmam Pannayam* are further stages in the Otthi by which the jenmi gradually parts with his interest in the property culminating in a complete surrender of his rights. Whether the mortgage itself or any of these last stages is redeemable is more than doubtful. These forms are also more or less obsolete and we hear of them only very rarely.[3]

Kuzi Kanom. This is a form of reclaiming lease entered into for the purpose of raising gardens etc. The capital and labour to be expended in raising up the

1. 6 M. 140.
2. *Kumini Ama* v. *Parkam Kolusheri*, 1 M.H.C.R. 261
3. Maclean's Manual.—Malabar District Gazeteer—p. 307

gardens or carrying on other cultivation takes the place of the advance. The tenant holds either rent free or at nominal rents for twelve years. At the end of the period, he must take up a verum patam lease or a Kanom, else he may be ejected on payment by the landholder of the value of the improvements effected by the tenant.

In the absence of any specific stipulation, the lease is considered to run for 12 years, but the tenant may be ousted at any time for neglecting to improve the property according to agreement.[1]

Kutta Kanom is another form of ground breaking lease, and is in many places used to indicate a *Munpatam* lease which we have already described. The one distinction between *Kutta Kanom*, and *Kanom or Otti*, is said to be that in the case of the former no interest is payable on the advance, while in the case of the later some interest is payable. However, it may not be correct to say that no interest is payable at all in the case of *Kutta Kanoms*, because in some places, the practice seems to be the reverse. We may therefore say, that where *Kutta Kanom* is identified with *munpatam*, no interest is payable and is strictly a lease, but where it is distinguished from *munpatam*, it is a lease mortgage, and interest is payable, though it may be only nominal, on the advance.[2] But even in the latter case, unlike in kanom or kuzi kanom there is no presumption that the lease or mortgage enures for twelve years.

Peru Artham : This is a peculiar kind of transfer

1. Maclean's Manual Vol. III, p. 145.
2. Ibid.

and strictly speaking is neither a lease nor a mortgage. The following description of it is given in one of the early Madras cases.[1] "*Peruarthum*, is a transaction in which the proprietor receives the full market value of the property for the time being, retaining the empty title of *jenm* and in redeeming the property, he repays not the amount originally advanced to him, but the actual value of it in the market at the time of redemption." This mode of transfer is prevalent only in one or two taluks in the whole of Malabar.[2]

Mortgages Simpliciter

The general term used in Malabar to describe a security of mortgage is *panayam* (from Sanskrit pan = to stake.) It may be simple or usufructuary. Where it is simple, it is called *Todu panayam* or *Choondy panayam*, and where it is usufructuary it is called *Kari panayam* or *Kaivasa panayam*. *Oondarty panayam* is also an usufructuary mortgage, but it is entered into on the understanding that both the principal and the interest should be wiped out in a certain number of years by the usufruct of the property and on the expiry of those years the mortgagor is to be put back in possession of the mortgaged property.

IN SOUTH CANARA

The system of land revenue administration which obtains in South Canara at the present day is *ryotwari* pure and simple. But the system which was prevalent in the District prior to the year 1903, about which time

1. *Shekari Varma v Mangalto Amuyar*, 1 M. 57.
2. *Shekari Varma*, v. *Mangalam Amugar*, 1 M. 57.

"the last revenue settlement in that part of the presidency was concluded, though in essence *ryotwari*, differed materially from that which prevailed in the rest of the presidency. In the first place, as in Malabar, it was admitted that the proprietors of land who were called *wargdars* had absolute ownership in the lands comprising their holding subject to the payment of the revenue.[1] For instance, in his first long report on the District, Sir Thomas Munro wrote : " I have been the more particular in describing the obstacles I met with in the settlement of Canara, because, except in the districts claimed by poligars, they originated entirley in the inhabitants having once been in possession of a fixed land rent, and in their still universally possessing their lands as private property."[2] In the next place, there was no field war assessment or assessment on each field, based upon a detailed survey and estimate, but the total assessment payable on the lands comprising a *warg* or estate was fixed in a lump sum, based upon the collections in the previous years.

The estates[3] in the district were known by the name of *wargs*. The word warg (from the word *warga* in Sanskrit meaning *leaf*) was originally used to denote the leaf accounts kept by the revenue authorities. In course of time, the term came to be applied to the holding

1. This idea has not changed even now. It is not however suggested that in the rest of the presidency there is no private ownership. It is only pointed out that in this District it is clearly and openly admitted.

2. Dated the 31st of May 1880, para 4. Extracted in the S.C. District Gazetteer page 117.

3. Not used in the technical sense of the Estates Land Act.

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